

**38 CFR Part 79****RIN 2900-AR33****Legal Services for Homeless Veterans and Veterans At-Risk for Homelessness
Grant Program**

AGENCY: Department of Veterans Affairs.

ACTION: Interim final rule.

SUMMARY: The Department of Veterans Affairs (VA) issues this rule to implement a new authority requiring VA to award grants to eligible entities that will provide certain legal services for homeless veterans and veterans at risk for homelessness. This new grant program is within the continuum of VA's homeless services programs. This rulemaking specifies grant eligibility criteria, application requirements, scoring criteria, constraints on the allocation and use of the funds, and other requirements necessary to implement this grant program.

DATES: *Effective date:* This interim final rule is effective [insert date 30 days after date of publication in the FEDERAL REGISTER].

Comment date: Comments must be received on or before [insert date 60 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: Comments must be submitted through www.Regulations.gov.

Comments received will be available at [regulations.gov](https://www.regulations.gov) for public viewing, inspection or copies. Comments received will be available at [regulations.gov](https://www.regulations.gov) for public viewing, inspection or copies.

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SUPPLEMENTARY INFORMATION:

Background on Governing Statute and Public Input

On January 5, 2021, the Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020, Public Law 116-315 (the Act) was enacted in law to improve the lives of veterans during the COVID-19 pandemic and beyond. Several sections, including section 4202, of the Act were created to better serve veterans who are struggling with homelessness or housing insecurity. *Id.* Section 4202 of the Act, codified at section 2022A of title 38, United States Code (U.S.C.), directs the Secretary of Veterans Affairs (Secretary) to award grants to eligible entities to provide legal services to homeless veterans and veterans at risk for homelessness.

The Act requires that VA, in establishing criteria and requirements for grants under section 4202 of the Act, consult with organizations that have experience in providing services to homeless veterans. Therefore, in March 2021, we solicited feedback from selected veteran service organizations, Equal Justice Works (EJW), and other legal services organizations with experience in providing services to homeless veterans via email. VA requested information in five areas: (1) criteria and requirements necessary to carry out this grant program in rural communities, on trust lands, or in territories and possessions of the United States; (2) types of legal services VA should consider authorizing as part of this grant program; (3) evaluation criteria VA should consider using to assess the operational effectiveness and cost effectiveness of this grant program; (4) general criteria and requirements that VA should have for this grant program; and (5) criteria that VA require for eligible entities to receive grants under this grant program. We received input from 13 organizations. The majority of the comments centered on: (1) definitions that should be included in the regulation (§ 79.5) and/or

Notice of Funding Opportunity (NOFO); (2) the types of legal services that should be provided to eligible veterans to include an expanded view of issues impacting the veteran population that may not be seen as directly tied to housing instability, such as consumer debt issues and income support services (§ 79.20); (3) scoring criteria considerations, which focused on an applicant's connections to a community, ability to work with other organizations, and cultural competence with the affected population being served (§ 79.35); and (4) metrics the legal services programs could use for VA to determine their cost and operational effectiveness. The feedback received is publicly available online at www.regulations.gov.

Part 79, of title 38, Code of Federal Regulations

Through this interim final rule, VA establishes and implements, in new part 79 of title 38, Code of Federal Regulations (CFR), the Legal Services for Homeless Veterans and Veterans At-Risk for Homelessness Grant Program (hereinafter referred to as the "Grant Program"). Establishment of this new part ensures organization and clarity for implementation of this new grant program. By issuance of the regulations in this new part, VA implements the Grant Program to award grants to eligible entities who will provide legal services to eligible veterans. The content of this new part is described in detail below.

Consistent with section 4202 of the Act, part 79 is titled the Legal Services for Homeless Veterans and Veterans At-Risk for Homelessness Grant Program.

Section 79.0 Purpose and scope.

Section 79.0 explains the purpose and scope of part 79. Paragraph (a) states that the purpose of this part is to implement the Legal Services for Homeless Veterans and Veterans At-Risk for Homelessness Grant Program. This Grant Program authorizes VA to award legal services grants to eligible entities to provide legal services to eligible veterans. This is consistent with the intent and purpose of section 4202 of the Act.

Paragraph (b) states that legal services covered by this part are those services that address the needs of eligible veterans who are homeless or at risk for homelessness. This is consistent with the intent and purpose of the Grant Program described in section 4202 of the Act.

Section 79.5 Definitions.

Section 79.5 contains the definitions for key terms that apply to the new part 79 and to any Notice of Funding Opportunity (NOFO) for this Grant Program. The definitions are listed in alphabetical order, beginning with the definition of applicant.

VA defines applicant to mean an eligible entity that submits an application for a legal services grant announced in a NOFO. VA is defining applicant in this manner since only an eligible entity, as specified in § 79.10, may submit an application for a legal services grant under this part in accordance with § 79.25. This definition is based also on a plain language understanding of this term and is consistent with other grant programs that VA administers, such the Supportive Services for Veteran Families (SSVF) Program. See 38 CFR 62.2. As explained in § 79.25, VA will require submission of an application similar to other grant programs that VA administers.

VA defines at risk for homelessness to mean an individual who meets the criteria identified in § 79.15(b).

VA defines direct Federal financial assistance to mean Federal financial assistance received by an entity selected by the Government or a pass-through entity as defined in 38 CFR 50.1(d) to provide or carry out a service (e.g., by contract, grant, or cooperative agreement). This term is used for purposes of § 79.80 pertaining to faith-based organizations and is consistent with how VA defines this in the SSVF Program. See 38 CFR 62.62.

VA defines disallowed costs as costs charged by a grantee that VA determines to be unallowable based on applicable Federal cost principles or based on this part or the

legal services grant agreement. This is consistent with how VA defines this term in the SSVF Program. See 38 CFR 62.2. This term is used for purpose of grant closeout procedures in § 79.115.

VA defines eligible entity to mean an entity who meets the requirements of § 79.10.

VA defines eligible veteran as a veteran that meets the requirements of § 79.15(a) or (b). As discussed later in this rulemaking, § 79.15 describes the eligibility criteria to be an eligible veteran under part 79.

VA defines grantee as an eligible entity that is awarded a legal services grant under this part. This is consistent with how VA defines grantee for other VA grant programs and is consistent with the plain meaning of this term.

Consistent with 38 U.S.C. 2002(a)(1), VA defines homeless veteran to mean a veteran who is homeless as that term is defined in subsection (a) or (b) of section 103 of the McKinney–Vento Homeless Assistance Act (42 U.S.C. 11302).

For the purposes of this part, Indian tribe means an Indian tribe as defined in 25 U.S.C. 4103. Section 4103(13)(A) of title 25, U.S.C., defines Indian tribe in general to mean a tribe that is a Federally or a State recognized tribe. Section 4103(13)(B) of title 25, U.S.C., further defines Federally recognized tribe to mean any Indian tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians pursuant to the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.). Section 4103(13)(C) of title 25, U.S.C., also defines State recognized tribe to mean any tribe, band, nation, pueblo, village, or community— (1) that has been recognized as an Indian tribe by any State;

and (2) for which an Indian Housing Authority has, before the effective date under section 705, entered into a contract with the Secretary of Housing and Urban Development pursuant to the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.) for housing for Indian families and has received funding pursuant to such contract within the 5-year period ending upon such effective date. This definition also includes certain conditions set forth in 25 U.S.C. 4103(13)(C)(ii).

VA defines indirect Federal financial assistance to mean Federal financial assistance in which a service provider receives program funds through a voucher, certificate, agreement or other form of disbursement, as a result of the genuine, independent choice of a participant. This term is used for purposes of § 79.80 and is consistent with how VA defines this in the SSVF Program. See 38 CFR 62.62.

VA defines legal services as those services listed in § 79.20. This is consistent with 38 U.S.C. 2022A(d) regarding the use of funds under section 4202 of the Act.

VA defines legal services grant as a grant awarded under this part. This definition is based on the plain language understanding of this term.

VA defines legal services grant agreement as the agreement executed between VA and a grantee as specified under § 79.70. This definition is based on the plain language understanding of this term and is consistent with the definition of similar terms in other VA regulations. See § 62.2.

VA defines a non-profit private entity as an entity that meets the criteria in § 79.10(c).

VA defines notice of funding opportunity (NOFO) using the meaning given to this term in 2 CFR 200.1. Section 200.1 defines NOFO to mean a formal announcement of the availability of Federal funding through a financial assistance program from a Federal awarding agency. The NOFO provides information on the award, who is eligible to apply, the evaluation criteria for selection of an awardee, required components of an

application, and how to submit the application. The NOFO is any paper or electronic issuance that an agency uses to announce a funding opportunity, whether it is called a “program announcement,” “notice of funding availability,” “broad agency announcement,” “research announcement,” “solicitation,” or some other term. Part 200 of 2 CFR establishes the uniform administrative requirements, cost principles, and audit requirements for Federal awards to non-Federal entities. This grant program would be subject to the requirements of 2 CFR part 200.

VA defines participant to mean an eligible veteran who is receiving legal services from a grantee under this part. This definition is necessary for purposes of understanding part 79 and the Grant Program.

VA defines public entity to mean an entity that meets the criteria in § 79.10(b).

VA defines rural communities to mean those communities considered rural according to the Rural-Urban Commuting Area (RUCA) system as determined by the United States Department of Agriculture (USDA). VA will use this term and its definition for purposes of prioritizing the distribution of grants to rural communities pursuant to section 4202 of the Act. For more information on RUCA, please refer to <https://www.ers.usda.gov/data-products/rural-urban-commuting-area-codes/>.

VA defines State to mean any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments. This is consistent with the definition of State as used in 38 U.S.C. 101(20) and in the SSVF Program (see § 62.2). This is also consistent with the definition of State as used in 2 CFR 200.1.

VA defines subcontractor to mean any third-party contractor, of any tier, working directly for an eligible entity.

VA defines suspension to mean an action by VA that temporarily withdraws VA funding under a legal services grant, pending corrective action by the grantee or pending a decision to terminate the legal services grant by VA. Suspension of a legal services grant is a separate action from suspension under VA regulations or guidance implementing Executive Orders 12549 and 12689, "Debarment and Suspension." This definition is consistent with the SSVF Program's definition for this term. See § 62.2. However, with regards to implementing Executive Orders 12549 and 12689, VA has added the word guidance, as not all of VA's implementations of Executive Orders are regulatory.

Tribal organization has the meaning given that term in 25 U.S.C. 5304. Section 5304 defines a tribal organization as the recognized governing body of any Indian tribe; any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities: Provided, that in any case where a contract is let or grant is made to an organization to perform services benefiting more than one Indian tribe, the approval of each such Indian tribe shall be a prerequisite to the letting or making of such contract or grant. This definition is consistent with the reference to tribal organizations in section 4202 of the Act.

Trust land has the meaning given that term in 38 U.S.C. 3765. Section 3765 defines trust land to mean any land that (A) is held in trust by the United States for Native Americans; (B) is subject to restrictions on alienation imposed by the United States on Indian lands (including native Hawaiian homelands); (C) is owned by a Regional Corporation or a Village Corporation, as such terms are defined in section 3(g) and 3(j) of the Alaska Native Claims Settlement Act, respectively (43 U.S.C. 1602(g),

(j)); or (D) is on any island in the Pacific Ocean if such land is, by cultural tradition, communally-owned land, as determined by the Secretary.

VA defines very low income to mean a veteran's income is 50 percent or less of the median income for an area or community. This is consistent with the definition of very low-income veteran family used for purposes of the SSVF Program but tailored to individuals for purposes of this program. See 38 U.S.C. 2044(f)(6). VA believes that incorporating an eligible entity's experience with low-income populations as an alternative criterion will be helpful in determining organizations' familiarity with populations similar to those targeted by the Grant Program, homeless veterans and veterans who are at risk for homelessness. We note that this term is used throughout part 79, including § 79.35 regarding scoring criteria for legal services grant applicants and § 79.40 regarding preferences for selection of grantees. We note that an individual is not required to be considered very low income to be eligible for receive legal services provided pursuant this Grant Program. See § 79.15 for eligibility criteria.

Veteran has the same meaning given that term under 38 U.S.C. 101(2). Section 101 of title 38, U.S.C., defines veteran as a person who served in the active military, naval, air, or space service, and who was discharged or released therefrom under conditions other than dishonorable. This term is used for purposes of identifying eligible veterans as defined in § 79.15 in this part.

VA defines withholding to mean that payment of a legal services grant will not be paid until such time as VA determines that the grantee provides sufficiently adequate documentation and/or actions to correct a deficiency for the legal services grant. This term is defined in this manner as it is intended to provide a general description of how this term is used in 2 CFR part 200, which governs VA grant programs including the legal services grant program. This term relates to withholding payment of a legal services grant pursuant to § 79.110, described later in this rulemaking.

Section 79.10 Eligible entities.

Consistent with 38 U.S.C. 2022A(c), § 79.10 provides the criteria for an entity to be considered an eligible entity. Paragraph (a) provides that, in order to be an eligible entity under this part, the entity must (1) be a public or nonprofit private entity with the capacity to effectively administer a grant under this part; (2) demonstrate that adequate financial support will be available to carry out the services for which the grant is sought consistent with the legal services grant application; and (3) agree to meet the applicable criteria and requirements of this part.

Paragraph (b) provides that a public entity must be a local government, State government, or federally recognized Indian tribal government. Paragraph (b)(1) states that local government consists of either a county, municipality, city, town, township, local public authority (including any public and Indian housing agency under the United States Housing Act of 1937), school district, special district, intrastate district, council of governments (whether or not incorporated as a nonprofit corporation under state law), any other regional or interstate government entity, or any agency or instrumentality of a local government. Paragraph (b)(2) states that a public entity can be a State government. Paragraph (b)(3) states that federally recognized Indian tribal government means the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any Native village as defined in section 3 of the Alaska Native Claims Settlement Act, 85 Stat. 688) certified by the Secretary of the Interior as eligible for the special programs and services provided by him through the Bureau of Indian Affairs. Using these definitions establishes consistency and uniformity among Federal agencies in the administration of grants and cooperative agreements to State, local, and federally recognized Indian tribal governments.

Paragraph (c) states that a non-profit private entity is an entity that meets the requirements of 26 U.S.C. 501(c)(3) or (19). We would reference 26 U.S.C. 501(c)(3) or (19) as the Internal Revenue Service determines non-profit designation for purposes of tax exemptions pursuant to such statute. Subsection 501(c)(3) includes corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation (except as otherwise provided in 26 U.S.C. 501(h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

Subsection 501(c)(19) of title 26 includes a post or organization of past or present members of the Armed Forces of the United States, or an auxiliary unit or society of, or a trust or foundation for, any such post or organization—(A) organized in the United States or any of its possessions, (B) at least 75 percent of the members of which are past or present members of the Armed Forces of the United States and substantially all of the other members of which are individuals who are cadets or are spouses, widows, widowers, ancestors, or lineal descendants of past or present members of the Armed Forces of the United States or of cadets, and (C) no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 79.15 Eligible veterans.

Section 79.15 describes the criteria for individuals to receive legal services under this Grant Program. Pursuant to paragraph (a) of this section, to be eligible for legal

services under this part, an individual must be a homeless veteran or a veteran at risk for homelessness.

Under paragraph (b), VA provides the criteria to be considered at risk for homelessness. At risk for homelessness in this part means an individual who does not have sufficient resources or support networks, e.g., family, friends, faith-based or other social networks, immediately available to prevent them from moving to an emergency shelter or another place described in paragraph (1) in the definition of “homeless” found in 24 CFR 576.2 and meets one or more of the following conditions: (1) has moved because of economic reasons two or more times during the 60 days immediately preceding the application for assistance; (2) is living in the home of another because of economic hardship; (3) has been notified in writing that their right to occupy their current housing or living situation will be terminated within 21 days after the date of application for assistance; (4) is constructively evicted from their current housing because of untenable conditions created by the landlord such as shutting off electricity and water or discriminatory acts; (5) lives in a hotel or motel and the cost of the hotel or motel stay is not paid by charitable organizations or by Federal, State, or local government programs for low-income individuals; (6) lives in a single-room occupancy or efficiency apartment unit in which there reside more than two persons or lives in a larger housing unit in which there reside more than 1.5 persons reside per room, as defined by the U.S. Census Bureau; (7) is exiting a publicly funded institution, or system of care (such as a health-care facility, a mental health facility, foster care or other youth facility, or correction program or institution); (8) is fleeing, or is attempting to flee domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions that relate to violence against the individual, including a child, that has either taken place within the individual’s primary nighttime residence or has made the individual afraid to return to their primary nighttime residence; or (9) otherwise lives in

housing that has characteristics associated with instability and an increased risk for homelessness.

As section 4202 of the Act did not define the term “at risk of homelessness,” we researched how VA has defined this term for other programs, such as SSVF Program. In such programs, VA has used the definition used by HUD in implementing emergency solutions grants pursuant to the McKinney-Vento Homeless Assistance Act. See 24 CFR 576.2. Thus, for purposes of this Grant Program, we are using the definition of at risk of homelessness as defined in § 576.2. However, we have made minor changes to the definition to better reflect the purpose of this Grant Program. First, we removed the criterion that the individual has an annual income below 30 percent of the median family income for the area, as determined by HUD. We do not want veterans to be unable to receive services due to income limitations. VA recognizes that there may be situations where a veteran earns an income beyond the HUD limitation in 24 CFR 576.2(i) but is still unable to maintain housing because of a high cost of living where they reside. We also did not include homelessness prevention as a qualifier for assistance found in 24 CFR 576.2(iii)(A). VA recognizes that other types of assistance exist that that may not fall specifically under homelessness prevention assistance but have the impact of preventing homelessness. We also added two new possible criteria for eligibility in § 79.15(b)(4) and (8): constructive eviction due to untenable conditions created by the landlord; and situations involving intimate partner violence. These criteria were added in response to recommendations from legal service organizations during the consultation in March 2021. Commenters made these suggestions based on their experience providing legal services to homeless and at-risk veterans. Thus, we believe that these additional criteria would ensure legal services provided pursuant to these grants would be more responsive to the needs of these veterans. Finally, we removed the provisions related to children and family members because this Grant Program is designed to

assist individual veterans. Although the ultimate outcome of the legal service provided to a veteran may positively impact that veteran's children or family, the direct impact of this grant was designed to assist individual veterans.

Section 79.20 Legal Services

Consistent with 38 U.S.C. 2022A(d), 38 CFR 79.20 enumerates allowable legal services covered under this Grant Program. These include (a) legal services related to housing, including eviction defense, representation in landlord-tenant cases, and representation in foreclosure cases; (b) legal services related to family law, including assistance in court proceedings for child support and custody, divorce, estate planning, and family reconciliation; (c) legal services related to income support, including assistance in obtaining public benefits; (d) legal services related to criminal defense, including defense in matters symptomatic of homelessness, such as outstanding warrants, fines, and driver's license revocation, and citations (to reduce recidivism and facilitate the overcoming of reentry obstacles in employment or housing, covered legal services relating to criminal defense also include legal assistance with request to expunge or seal a criminal record); (e) legal services relating to requests to upgrade the characterization of discharge or dismissal of a former member of the Armed Forces under 10 U.S.C. 1553; and (f) other covered legal services as the Secretary determines appropriate.

Those other legal services include: legal assistance with protective orders and other matters related to domestic or intimate partner violence; access to health care; consumer law matters, such as debt collection, garnishments, usury, fraud, deceit, and financial exploitation; employment law matters; and unmet legal needs of male and female veterans enumerated in VA's annual Community Homelessness Assessment, Local Education and Networking Groups (CHALENG) survey for the grant award year. We intentionally left the legal services categories broad enough to provide grantees with

flexibility to determine the types of legal services that an organization could provide within each category. In addition, VA may periodically review the legal services enumerated above and make modifications as necessary through the rulemaking process to meet the needs of eligible veterans.

Section 79.25 Applications for legal services grants.

Section 79.25 sets forth the criteria for a complete application for a legal services grant under this part.

Paragraph (a) explains that applicants must submit a complete application package for a legal services grant, as described in the NOFO, and enumerates the necessary information for VA to consider the application package complete. This list of items described in paragraph (a) ensures that VA can adequately evaluate applicants for the purposes of this Grant Program.

A complete legal services grant application package includes: (1) a description of the legal services to be provided by the applicant and the identified need for such legal services among eligible veterans; (2) a description of how the applicant will ensure that services are provided to eligible veterans, including women veterans; (3) a description of the characteristics of eligible veterans who will receive legal services provided by the applicant; (4) an estimate with supporting documentation of the number of eligible veterans who will receive legal services provided by the applicant, including an estimate of the number of eligible women veterans, who will receive legal services provided by the applicant; (5) a plan for how the applicant will use at least ten percent of the grant funds to serve eligible women veterans; (6) documentation describing the experience of the applicant and any identified subcontractors in providing legal services to eligible veterans; (7) documentation relating to the applicant's ability to coordinate with any identified subcontractors; (8) documentation of the applicant's capacity to effectively

administer a grant under this section that describes the applicant's: (i) accounting practices and financial controls; (ii) capacity for data collection and reporting required under this part; and (iii) experience administering other Federal, State, or county grants similar to the Grant Program under this part; (9) documentation of the managerial capacity of the applicant to: (i) coordinate the provision of legal services by the applicant or by other organizations on a referral basis; (ii) assess continuously the needs of eligible veterans for legal services; (iii) coordinate the provision of legal services with services provided by VA; (iv) customize legal services to the needs of eligible veterans; and (v) comply with and implement the requirements of this part throughout the term of the legal services grant; (10) documentation that demonstrates that adequate financial support will be available to carry out the legal services for which the grant is sought consistent with the application; and (11) any additional information as deemed appropriate by VA. VA plans to offer technical assistance to help prospective applicants clarify any aspects of the application package.

We note that the requirement in § 79.25(a)(5) that applicants provide in their application a plan for how they will use at least ten percent of the grant funds to serve eligible women veterans is included in order to meet the requirement in 38 U.S.C. 2022A(e). Subsection (e) requires that for any fiscal year, not less than ten percent of the amount authorized to be appropriated for grants under section 2022A be used to provide legal services under this part to women veterans.

Paragraph (b) states that subject to funding availability, grantees may submit an application for renewal of a legal services grant if the grantee's program will remain substantially the same. To apply for renewal of a legal services grant, a grantee must submit to VA a complete legal services grant renewal application package, as described in the NOFO. This is consistent with how VA administers other VA grant programs, such as the SSVF Program under part 62 and will allow VA to renew grants in an efficient

and timely manner so that there will be no lapse in the provision of legal services by grantees to participants from year to year.

Paragraph (c) establishes that VA may request, in writing, that an applicant or grantee, as applicable, submit other information or documentation relevant to the legal services grant application. Consistent with 38 U.S.C. 2022A(b)(1)(A), VA may then request additional information that may not be in the initial or renewal application but will be necessary for VA to properly evaluate the applicant or grantee for a legal services grant.

Section 79.30 Threshold requirements prior to scoring legal services grant applicants.

Section 79.30 sets forth the threshold requirements for further scoring applicants pursuant to § 79.35. This section explains that VA will only score applicants for the Grant Program if they meet certain threshold requirements as set forth in paragraphs (a) through (g).

These threshold requirements in paragraphs (a) through (g) include that the application is filed within the time period established in the NOFO, and any additional information or documentation requested by VA under § 79.25(c) is provided within the time frame established by VA; the application is completed in all parts; the activities for which the legal services grant is requested are eligible for funding under part 79; the applicant's prospective participants are eligible to receive legal services under that part; the applicant agrees to comply with the requirements of that part; the applicant does not have an outstanding obligation to the Federal Government that is in arrears and does not have an overdue or unsatisfactory response to an audit; and the applicant is not in default by failing to meet the requirements for any previous Federal assistance.

These requirements are minimum requirements that must be met before VA will score applications, and applicants will be able to understand whether they meet these threshold requirements in advance of application submission. The threshold

requirements are intended to be an administrative checklist with which applicants would confirm compliance prior to submitting a legal services grant application. VA anticipates this will reduce the amount of time and resources that VA will dedicate to evaluating and scoring applicants. These threshold requirements are consistent with other VA grant programs, such as the SSVF Program. See 38 CFR 62.21.

Section 79.35 Scoring criteria for legal services grant applicants.

Section 79.35 sets forth the criteria to be used to score applicants who are applying for a legal services grant. Since VA has a limited amount of funds available to distribute through the Grant Program and the number of qualified applicants may exceed available funds, VA is establishing scoring criteria for awarding legal services grants. Utilization of these scoring criteria will allow VA to distribute these grants consistent with section 4202 of the Act and VA's goals and objectives for the Grant Program which will be detailed in the NOFO. The categories are weighted differently according to their likelihood of impacting a grantee's successful development and operation of a grant program. These criteria are consistent with feedback received from commenters during our consultation with legal service providers. The criteria, which are discussed in depth below, are enumerated in paragraphs (a) through (e).

While this section does not include specific point values for each criterion, the regulation provides that such point values will be set forth in the NOFO. This will allow VA to retain flexibility in determining those point values each year of the Grant Program in the event that such point values need to change.

Paragraph (a) explains that VA will award points based on the background, qualifications, experience, and past performance, of the applicant and any subcontractors identified by the applicant in the legal services grant application, as demonstrated by the following: (1) background and organizational history; and (2) organization and staff qualifications. These scoring criteria are important to determine

whether applicants have the necessary and relevant background and experience to provide legal services consistent with this part and section 4202 of the Act.

In scoring an applicant's background and organizational history under paragraph (a)(1), VA will consider the applicant's, and any identified subcontractors', background and organizational history relevant to providing legal services; whether the applicant, and any identified subcontractors, maintain organizational structures with clear lines of reporting and defined responsibilities; and whether the applicant, and any identified subcontractors, have a history of complying with agreements and not defaulting on financial obligations.

In scoring an applicant's staff qualifications under paragraph (a)(2), VA will score applications based on the experience of the applicant and any identified subcontractors working with veterans or individuals who are homeless, at risk for homelessness, or who have very low income, as defined under part 79. Having experience and understanding of the veteran population would bring a military and veteran cultural competency that is critical for ensuring that the needs of eligible veterans are met through the Grant Program. This is consistent with the feedback received through consultation. The mix of general and specific criteria with respect to experience with veterans allows VA flexibility to award points at various levels (local, regional, State) since the types of experience entities at those levels may have can vary. Thus, pursuant to paragraph (a), VA will score applicants not only based on their experience administering programs similar to a legal services grant program and providing services to those who are homeless, at risk for homelessness, or very low-income, but also based on the applicant's experience working with veterans.

VA notes that while not required by the statute, it believes including an applicant's experience with very low-income populations as an alternative criterion will be useful to determine organizations' familiarity with populations similar to the target

populations in the Grant Program, homeless veterans and veterans who are at risk for homelessness. By having low income as an option for applicants to demonstrate past experience, qualified applicants may be able to present experience administering a program similar in type and scale to the legal services contemplated by the Grant Program, if not specifically with individuals who are homeless, at risk for homelessness, or veterans. Accordingly, VA will score applications based on the experience of the applicant and identified subcontractors providing legal services, including providing such services to veterans, or individuals who are homeless, at risk for homelessness or who have very low income.

Relatedly, VA will score applicants also based on the qualifications of the applicant's staff and any identified subcontractors' staff to administer legal services. This would include, as applicable, confirmation that the applicant, and any identified subcontractor, has barred attorneys on staff or a plan to hire such attorneys who are in good standing as a member of the applicable State bar. It would also consider the experience that applicants' staff administering programs similar to this Grant Program.

Paragraph (b) explains that VA will award points based on the applicant's program concept and legal services plan. The scoring criteria under this paragraph are important for VA to use to determine whether the applicant has a fully developed program concept and plan that will meet the intent of this part and section 4202 of the Act. Points awarded in accordance with this paragraph may be demonstrated by the following: (1) need for the program, (2) outreach and screening plan, (3) program concept, (4) program implementation timeline, (5) collaboration and communication with VA, (6) ability to meet VA's requirements, goals, and objectives for the Grant Program, and (7) capacity to undertake the program.

VA will score the need for the program under paragraph (b)(1) based on whether the applicant has shown a need amongst eligible veterans in the area or community

where the program will be based and whether the applicant understands the legal service needs unique to eligible veterans in the area or community where the program will be based.

VA will score the outreach and screening plan under paragraph (b)(2) based on whether the applicant has a feasible outreach and referral plan to identify and assist eligible veterans in need of legal services, has a plan to process and receive legal services referrals for eligible veterans, and has a plan to assess and accommodate the needs of referred eligible veterans.

VA will score the applicant's program concept under paragraph (b)(3) based on whether the applicant's program concept, size, scope, and staffing plan are feasible, and the applicant's program is designed to meet the needs of eligible veterans in the area or community where the program will be based.

VA will score the program implementation timeline under paragraph (b)(4) based on whether the applicant's program will be implemented in a timely manner and legal services will be delivered to eligible veterans as quickly as possible and within a specified timeline. VA will also score this based on whether the applicant has a hiring plan in place to meet the applicant's program timeline or has existing staff to meet such timeline.

VA will score the ability of an applicant to collaborate and communicate with VA under paragraph (b)(5) based on the strength of the applicant's plan to coordinate outreach and services with local VA facilities.

VA will score the applicant's ability to meet VA's requirements, goals and objectives for the Grant Program under paragraph (b)(6) based on whether the applicant is committed to ensuring that its program meets VA's requirements, goals, and objectives for the Grant Program as identified in the NOFO.

Lastly, VA will score the applicant's capacity to undertake its proposed legal services program under paragraph (b)(7) based on whether the applicant has sufficient capacity, including staff resources, to undertake the program.

Paragraph (c) explains that VA will award points based on the applicant's quality assurance and evaluation plan, as demonstrated by (1) program evaluation, (2) monitoring, (3) remediation, and (4) management and reporting. This scoring criterion is important to ensure that applicants can meet any requirements for evaluation, monitoring, and reporting contained in this part and will help VA ensure that grant funds are being used appropriately and will assist in the overall assessment of the program.

Under paragraph (c)(1), VA will evaluate whether the applicant has demonstrated an ability to evaluate its program through the presence of clear, realistic, and measurable metrics that align with the Grant Program's aim of addressing the legal needs of eligible veterans and through which the applicant's program performance can be continually evaluated.

Under paragraph (c)(2), VA will score the applicant's ability to monitor its proposed legal services program based on whether the applicant has adequate controls in place to regularly monitor the program, including any subcontractors, for compliance with all applicable laws, regulations, and guidelines; whether the applicant has adequate financial and operational controls in place to ensure the proper use of legal services grant funds; and the applicant has a plan for ensuring that the applicant's staff and any identified subcontractors are appropriately trained and comply with the requirements of part 79.

VA will score applicants' ability to remediate program issues under paragraph (c)(3) based on the applicant's plan or established system for remediating non-compliant aspects of the program if and when they are identified.

VA will score an applicant's ability to conduct management and reporting functions in its proposed legal services program under paragraph (c)(4) based on whether the applicant's program management team has the capability and a system in place to provide to VA timely and accurate reports at the frequency set by VA.

Paragraph (d) explains that VA will award points based on the applicant's financial capability and plan, as demonstrated by: (1) organizational finances (based on whether applicant, and any identified subcontractors, are financially stable); and (2) financial feasibility of program (based on whether the applicant has a realistic plan for obtaining all funding required to operate the program for the period of the legal services grant; and whether applicant's program is cost-effective and can be effectively implemented on-budget). These are important to ensure that funds are not provided to an applicant that has not considered the costs and has not developed a plan to ensure they have the necessary funding for administering a legal services program.

Paragraph (e) explains that VA will award points based on the applicant's area or community linkages and relations, as demonstrated by the (1) area or community linkages, (2) past working relationships, (3) local presence and knowledge, and (4) integration of linkages and program concept. This is important for ensuring success of the applicant's proposed legal services program. VA acknowledges that applicants may not have these existing linkages and relationships but may develop them over time. VA also acknowledges that certain applicants without these existing linkages and relationships may obtain them through community partners. Area or community linkages under paragraph (e)(1) will include whether the applicant has a plan for developing or has existing linkages with Federal (including VA), State, local, and tribal governments, agencies, and private entities for the purposes of providing additional legal services to eligible veterans. Past working relationships under paragraph (e)(2) will include whether the applicant (or applicant's staff), and any identified subcontractors (or subcontractors'

staff), have fostered successful working relationships and linkages with public and private organizations providing legal and non-legal supportive services to veterans who are also in need of legal services similar to those covered under the Grant Program. Local presence and knowledge under paragraph (e)(3) will be based on whether the applicant has a presence in the area or community to be served by the applicant and understands the dynamics of the area or community to be served by the applicant. Integration of linkages and program concept under paragraph (e)(4) will be based on whether the applicant's linkages to the area or community to be served by the applicant enhance the effectiveness of the applicant's program.

Section 79.40 Selection of Grantees.

In accordance with the Act, § 79.40 sets forth the process for selecting applicants for legal services grants, including distribution requirements from section 4202 of the Act. The scoring criteria are enumerated in paragraphs (a) through (f).

Paragraph (a) explains that VA will score all applicants that meet the threshold requirements set forth in § 79.30 using the scoring criteria set forth in § 79.35.

Paragraph (b) explains that VA will group applicants within the applicable funding priorities if funding priorities are set forth in the NOFO. As funding priorities can change annually, VA will set forth any funding priorities in the NOFO, which will allow VA flexibility in updating priorities in a quick and efficient manner every year that funds are available under this Grant Program.

Paragraph (c) sets forth how applicants are ranked. VA will rank those applicants that receive at least the minimum amount of total points and points per category set forth in the NOFO, within their respective funding priority group, if any. VA will set forth the minimum amount of total points and points per category in the NOFO as these can change annually. Setting forth these points in the NOFO will provide VA flexibility in updating the minimum amount of points in an efficient and quick manner. The applicants

will be ranked in order from highest to lowest scores, within their respective funding priority group, if any.

Paragraph (d) explains that VA will use the applicant's ranking as the primary basis for selection for funding. However, consistent with section 4202 of the Act, paragraph (d) further explains VA preferences. In paragraph (d)(1), VA will give preference to applicants that have the demonstrated ability to provide legal services to eligible veterans who are homeless, at risk for homelessness or have very low income, as defined by this part.

In paragraph (d)(2), to the extent practicable, VA will ensure that legal services grants are equitably distributed across geographic regions, including rural communities, trust lands, Native Americans, and tribal organizations, consistent with 38 U.S.C. 2022A(f).

Lastly, in paragraph (d)(3), VA will give preference to applicants with a demonstrated focus on women veterans as set forth in the NOFO. VA will set forth information in the NOFO that will explain to applicants how this preference may be met with their application.

VA notes that legal services grant applications must include applicants' identification of the target populations and the area or community the applicant proposes to serve. VA will use this information in determining the distribution of legal services grants consistent with paragraph (d).

Paragraph (e) explains that subject to paragraph (d) of this section which sets forth the preference and distribution requirements and considerations, VA will fund the highest-ranked applicants for which funding is available, within the highest funding priority group, if any.

Similar to existing processes in other VA grant programs, such as the SSVF Program (38 CFR 62.61), paragraph (f) authorizes VA to still select an applicant for

funding if that applicant is not initially selected because of a procedural error by VA. An applicant would not be required to submit a new application in this situation. This will ease any administrative burden on applications and could be used in situations where there is no material change in the information that would have resulted in the applicant's selection for a grant under this part.

Section 79.45 Scoring criteria for grantees applying for renewal of legal services grants.

Section 79.45 describes the criteria that VA will use to score grantees under part 79 that are applying for renewal of a grant. Such criteria will assist with VA's review and evaluation of grantees to ensure that those grantees have successful existing programs using the previously awarded grant funds and that they have complied with the requirements of part 79 and of section 4202 of the Act. Applicants applying for renewal of a legal services grant will receive a score based on the scoring criteria enumerated in paragraphs (a) through (c).

While this section does not include specific point values for the criteria, such point values will be set forth in the NOFO. This will allow VA to retain flexibility in determining those point values each year of the Grant Program.

Under paragraph (a), VA will award points based on the success of the grantee's program, as demonstrated by the following: (1) participants were satisfied with the legal services provided by the grantee; (2) the grantee delivered legal services to participants in a timely manner; (3) the grantee implemented the program by developing and sustaining relationships with community partners to refer veterans in need of legal services; and (4) the grantee was effective in conducting outreach to eligible veterans, including to women veterans, and increased engagement of eligible veterans seeking legal services provided by the grantee.

Paragraph (b) explains that points will be awarded based on the cost-effectiveness of the grantee's program, as demonstrated by the following: (1) the cost

per participant was reasonable, and (2) the grantee's program was effectively implemented within budget.

Paragraph (c) explains that VA will award points based on the extent to which the grantee complied with the Grant Program's goals and requirements, as demonstrated by the following: (1) the grantee's program was administered in accordance with VA's goals for the Grant Program as described in the NOFO; (2) the grantee's program was administered in accordance with all applicable laws, regulations, and guidelines; and (3) the grantee's program was administered in accordance with the grantee's legal services grant agreement.

These criteria in paragraphs (a) through (c) ensure that renewal of grants is awarded based on the grantee's program's success, cost-effectiveness, and compliance with VA goals and requirements for this Grant Program. This is consistent with how VA awards renewals of grants in other programs, such as the SSVF Program. See 38 CFR 62.24.

Section 79.50 Selecting grantees for renewal of legal services grants.

Section 79.50 describes the process for selecting grantees that are applying for renewal of such grants. VA scores renewal applicants under a simplified process based on the success and cost effectiveness of their legal services program and their program's compliance with VA requirements and programmatic goals. The scoring criteria is enumerated in paragraphs (a) through (e).

Paragraph (a) explains that so long as grantees continue to meet the threshold requirements in § 79.30, VA will score the grantee using the scoring criteria set forth in § 79.45.

Under paragraph (b), VA will rank those grantees who receive at least the minimum amount of total points and points per category set forth in the NOFO, and such grantees will be ranked in order from highest to lowest scores.

Paragraph (c) explains that VA will use the grantee's ranking as the basis for selection for funding and that VA will fund the highest-ranked grantees for which funding is available.

Paragraph (d) explains that, at its discretion, VA may award any non-renewed funds to an applicant or existing grantee. If VA chooses to award non-renewed funds to an applicant or existing grantee, VA will first offer to award the non-renewed funds to the applicant or grantee with the highest grant score under the relevant NOFO that applies for, or is awarded a renewal grant in, the same community as, or a proximate community to, the affected community. Such applicant or grantee will be required to have the capacity and agree to provide prompt services to the affected community. Under this section, the relevant NOFO means the most recently published NOFO which will cover the geographic area that includes the affected community, or for multi-year grant awards, the NOFO for which the grantee, who is offered the additional funds, received the multi-year award. If the first such applicant or grantee offered the non-renewed funds refuses the funds, VA will then offer to award the funds to the next highest-ranked such applicant or grantee, per the criteria in paragraph (d)(1) of this section, and continue on in rank order until the non-renewed funds are awarded.

Paragraph (e) authorizes VA to select an existing grantee for available funding, based on the grantee's previously submitted renewal application, if that grantee is not initially selected for renewal because of a procedural error by VA. A grantee would not be required to submit a new renewal application in this situation. This will ease any administrative burden on grantees and could be used in situations where there is no material change in the renewal application that would have resulted in the grantee's selection for renewal of a grant under part 79.

Section 79.55 General operation requirements.

Section 79.55 establishes requirements for the general operation of legal services programs provided for under part 79. These requirements are enumerated in paragraphs (a) through (f).

Paragraph (a) address eligibility documentation. Paragraph(a)(1) explains that prior to providing legal services, grantees must verify, document, and classify each participant's eligibility for legal services. This ensures that grantees are providing services and using grant funds for those who are eligible for such services under this Grant Program and consistent with section 4202 of the Act. In paragraph (a)(2), once the grantee initiates legal services, the grantee will continue to provide legal services to the participant through completion of the legal services so long as the participant continues to meet the eligibility criteria set forth in § 79.15. In paragraph (a)(3), if a grantee finds at any point in the grant award period that a participant is ineligible to receive legal services under part 79, or that the provider is unable to meet the legal needs of that participant, the grantee must document the reason for the participant's ineligibility or the grantee's inability to provide legal services. Then, the grantee must provide the veteran information on other available programs or resources or provide a referral to another legal services organization that is able to meet that veteran's needs.

Under paragraph (b), for each participant who receives services from the grantee, the grantee must document the legal services provided, how such services were provided, the duration of the services provided, any goals for the provision of such services, and measurable outcomes of the legal services provided as determined by the Secretary, such as whether the participant's legal issue was resolved. This is information that grantees typically maintain regarding the provision of these or similar services. Additionally, this information may be requested by VA for purposes of monitoring the grantee's operation and compliance with part 79 and will be collected as part of the grantee's reporting requirements in § 79.95 and will be required to be

maintained for at least three years (consistent with the recordkeeping requirements in § 79.100), of which VA may request for auditing and evaluation purposes.

Under paragraph (c), grantees would be required to maintain the confidentiality of records kept in connection to legal services provided to participants. Grantees that provide legal services would be required to establish and implement procedures to ensure the confidentiality of records pertaining to any participant and the address or location where the legal services are provided. The confidentiality maintained should be consistent with the grantee's State bar rules of confidentiality in an attorney-client relationship.

Under paragraph (d), prior to initially providing legal services to a participant, the grantee is required to notify each participant of the following: (1) that the legal services are being paid for, in whole or in part, by VA; (2) the legal services which are available to the participant through the grantee's program; and, (3) any conditions or restrictions on the receipt of legal services by the participant.

Under paragraph (e), VA requires that grantees regularly assess how legal services grant funds can be used in conjunction with other available funds and services to ensure continuity of program operations and to assist participants. This encourages grantees to leverage other financial resources to ensure continuity of program operations and assistance to participants.

Lastly, under paragraph (f), VA requires that grantees ensure that legal services grants are administered in accordance with the requirements of part 79, the legal services grant agreement, and other applicable laws and regulations. Grantees must ensure that any subcontractors carry out activities in compliance with part 79.

Section 79.60 Fee prohibition.

Section 79.60 prohibits grantees from charging a fee to participants for providing legal services that are funded with amounts from a legal services grant under part 79.

VA believes this prohibition is appropriate, as similar prohibitions have been implemented for other similar grant programs, such as the SSVF Program, and is consistent with the intent of Section 4202 of the Act. See 38 CFR 62.37.

Section 79.65 Notice of Funding Opportunity.

Section 79.65 discusses the contents of the Notice of Funding Opportunity (NOFO). The NOFO is a notice published in the Federal Register and on grants.gov that communicates to the public when funds are available for legal services grants. As enumerated in paragraphs (a) through (j), the NOFO will identify items such as the location for obtaining legal services grant applications; the date, time, and place for submitting completed legal services grant applications; the estimated amount and type of legal services grant funding available, including the maximum grant funding available per award; any priorities for or exclusions from funding to meet the statutory mandates of 38 U.S.C. 2022A and VA goals for the Grant Program; the length of term for the legal services grant award; specific point values to be awarded for each criterion listed in §§ 79.35 and 79.45; the minimum number of total points and points per category that an applicant or grantee, as applicable, must receive in order for a legal services grant to be funded; any maximum uses of legal services grant funds for specific legal services; the timeframes and manner for payments under the legal services grant; and other information necessary for the legal services grant application process as determined by VA, including the requirements, goals, and objectives of the Grant Program, and how the preference under § 79.40(d)(3) may be met. This is consistent with how VA administers similar grant programs, such as the SSVF Program (see 38 CFR 62.40).

Section 79.70 Legal services grant agreements.

Section 79.70 discusses legal services grant agreements and the requirements that will be included in each agreement prior to VA obligating funds, as enumerated in paragraphs (a) through (c). This agreement will be enforceable against the grantee and

provides VA assurance that the grantee will use the legal services grant funds in the manner described in the application and in accordance with the requirements of part 79.

Under paragraph (a), after an applicant is selected for a legal services grant in accordance with § 79.40, VA will draft a legal services grant agreement to be executed by VA and the grantee. Upon execution of the legal services grant agreement, VA will obligate legal services grant funds to cover the amount of the approved legal services grant, subject to the availability of funding. Such agreement will provide that the grantee agrees, and will ensure that each subcontractor agrees, to operate the program in accordance with the provisions of part 79 and the grantee's legal services grant application; comply with such other terms and conditions, including recordkeeping and reports for program monitoring and evaluation purposes, as VA may establish for purposes of carrying out the Grant Program, in an effective and efficient manner; and provide such additional information as deemed appropriate by VA.

Paragraph (b) explains the requirements to execute a legal services agreement for grant renewal grant in accordance with § 79.50. The requirements and grant agreement provisions are the same as for initial grant awards as discussed in paragraph (a) of this section.

Paragraph (c) explains that no funds provided under part 79 may be used to replace Federal, State, tribal, or local funds previously used, or designated for use, to assist eligible veterans.

Section 79.75 Program or budget changes and corrective action plans.

Section 79.75 sets forth the required process grantees must use if there are changes to the program or budget that alter the grantee's legal services grant program. These requirements allow VA to ensure that grant funds are used appropriately and to maintain control over the quality of legal services provided by the grantee under this part. These requirements are enumerated in paragraphs (a) through (c).

Paragraph (a) states that a grantee must submit to VA a written request to modify a legal services grant program for any proposed significant change that will alter the grantee's legal services grant program. It further explains that if VA approves such change, it will issue a written amendment to the legal services grant agreement. A grantee must receive VA's approval prior to implementing a significant change. Significant changes include, but are not limited to, a change in the grantee or any subcontractors identified in the grant agreement; a change in the area or community served by the grantee; additions or deletions of legal services provided by the grantee; a change in category of participants to be served; and a change in budget line items that are more than 10 percent of the total legal services grant award.

VA's approval of changes will be contingent upon the grantee's amended application retaining a sufficient rank to have been competitively selected for funding in the year that the application was granted; and each legal services grant modification request will be required to contain a description of the revised proposed use of grant funds.

Under paragraph (b), VA may require that the grantee initiate, develop, and submit to VA for approval a Corrective Action Plan (CAP) if, on a quarterly basis, actual legal services grant expenditures vary from the amount disbursed to a grantee for that same quarter or actual legal services grant activities vary from the grantee's program description provided in the legal grant agreement. Paragraph (b) also sets forth specific requirements related to the CAP. These include that the CAP must identify the expenditure or activity source that has caused the deviation, describe the reason(s) for the variance, provide specific proposed corrective action(s), and provide a timetable for accomplishment of the corrective action. After receipt of the CAP, VA will send a letter to the grantee indicating that the CAP is approved or disapproved. If disapproved, VA

will make beneficial suggestions to improve the proposed CAP and request resubmission or take other actions in accordance with this part.

Paragraph (c) explains that grantees are required to inform VA in writing of any key personnel changes (e.g., new executive director, legal services grant program director, or chief financial officer) and grantee address changes within 30 days of the change.

Section 79.80 Faith-based organizations.

As VA anticipates that religious or faith-based organizations may apply for grants under this part, § 79.80 describes the conditions for use of legal services grants provided under this part as they relate to religious activities. The conditions are enumerated in paragraphs (a) through (g). This is similar to the language used for the Homeless Providers Grant and Per Diem Program (38 CFR 61.64) and the SSVF Program (38 CFR 62.62).

Under paragraph (a), faith-based organizations are eligible, on the same basis as any other organization, to participate in the Grant Program under this part. Decisions about awards of Federal financial assistance must be free from political interference or even the appearance of such interference and must be made on the basis of merit, not on the basis of religion or religious belief or lack thereof.

Under paragraph (b)(1), no organization may use direct financial assistance from VA under this part to pay for explicitly religious activities such as religious worship, instruction, or proselytization; or equipment or supplies to be used for any of those activities. Paragraph (b)(2) states that references to financial assistance are deemed to be references to direct Federal financial assistance, unless the referenced assistance meets the definition of indirect Federal financial assistance in part 79.

Under paragraph (c), organizations that engage in explicitly religious activities, such as worship, religious instruction, or proselytization, must offer those services

separately, in time or location, from any programs or services funded with direct financial assistance from VA under part 79. Furthermore, participation in any of the organization's explicitly religious activities must be voluntary for the participants of a program or service funded by direct financial assistance from VA under that part.

Under paragraph (d), a faith-based organization that participates in the Grant Program will retain its independence from Federal, State, or local governments, including the definition, practice and expression of its religious beliefs. However, organizations may not use direct financial assistance from VA under this part to support any explicitly religious activities, such as worship, religious instruction, or proselytization. Faith-based organizations may use space in their facilities to provide VA-funded services under this part, without concealing, removing, or altering religious art, icons, scripture, or other religious symbols. Additionally, a VA-funded faith-based organization retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members and otherwise govern itself on a religious basis, and include religious reference in its organization's mission statements and other governing documents.

Under paragraph (e), an organization that participates in the Grant Program shall not, in providing legal services, discriminate against a participant or prospective participant regarding legal services on the basis of religion or religious belief.

Under paragraph (f), if a State or local government voluntarily contributes its own funds to supplement federally funded activities, the State or local government has the option to segregate the Federal funds or commingle them. However, if the funds are commingled, this provision applies to all of the commingled funds.

Paragraph (g) states that to the extent otherwise permitted by Federal law, the restrictions on explicitly religious activities set forth in this section do not apply where VA funds are provided to faith-based organizations through indirect assistance as a result

of a genuine and independent private choice of a participant, provided the faith-based organizations otherwise satisfy the requirements of this part. A faith-based organization may receive such funds as the result of a participant's genuine and independent choice if, for example, a participant redeems a voucher, coupon, or certificate, allowing the participant to direct where funds are to be paid, or a similar funding mechanism provided to that participant and designed to give that participant a choice among providers.

Section 79.85 Visits to monitor operations and compliance.

Section 79.85 governs VA's authority to conduct onsite inspections to monitor grantee operations and compliance with the Grant Program. The ability for VA to conduct inspections and monitor operations is critical for VA oversight over the grants and is set forth in paragraphs (a) and (b).

Paragraph (a) authorizes VA to make visits to all grantee locations, at all reasonable times, where a grantee is using legal services grant funds to review grantee accomplishments and management control systems and to provide such technical assistance, as required. VA may also conduct inspections of all program locations and records of a grantee at such times as are deemed necessary to determine compliance with the provisions of this part. If a grantee delivers services in a participant's home, or at a location away from the grantee's place of business, VA may accompany the grantee. If the grantee's visit is to the participant's home, VA will only accompany the grantee with the consent of the participant. If any visit is made by VA on the premises of the grantee or a subcontractor under the legal services grant, the grantee must provide, and must require its subcontractors provide VA access to all reasonable facilities and assistance for the safety and convenience of the VA representatives in the performance of their duties. All visits and evaluations will be performed in such a manner as will not unduly delay services.

These provisions are critical for VA oversight over legal services grants and are consistent with how VA administers other grant programs. See 38 CFR 61.65 and 62.63.

Paragraph (b) clarifies that VA's authority to inspect does not provide VA with authority over the management or control of any applicant or grantee under part 79.

Section 79.90 Financial management and administrative costs.

Section 79.90 sets forth requirements with which grantees must comply regarding the financial management of approved grant funds. This provision is included in this interim final rule to ensure grantees are aware of additional requirements with which they must comply. These requirements are outlined in paragraphs (a) through (d).

Paragraph (a) requires grantees comply with applicable requirements of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards under 2 CFR part 200. Part 200 of 2 CFR establishes the uniform administrative requirements, cost principles, and audit requirements for Federal awards to non-Federal entities.

Paragraph (b) requires grantees use a financial management system that provides adequate fiscal control and accounting records and meets the requirements in 2 CFR part 200.

Paragraph (c) requires payment up to the amount specified in the legal services grant must be made only for allowable, allocable, and reasonable costs in conducting the work under the grant, and the determination of allowable costs must be made in accordance with the applicable Federal Cost Principles in 2 CFR part 200. Paragraph (d) prohibits costs for administration by a grantee from exceeding 10 percent of the total amount of the legal services grant. Administrative costs include all costs associated with the management of the program and include the administrative costs of subcontractors.

VA has determined this limitation on administrative costs to be reasonable and consistent with the purpose of the Grant Program to provide legal services to eligible veterans. This requirement ensures most of the grant funds (at least 90 percent) are used to provide legal services to participants, consistent with the purpose of the Grant Program. These requirements are also consistent with the SSVF Program, which allows only 10 percent of the grant funds to be used for specified administrative costs. See 38 CFR 62.10. VA has not identified any issues with this limitation in the context of the SSVF Program. VA believes that 10 percent is a reasonable maximum for administrative costs, and any additional funds needed by grantees to administer this Grant Program should be provided by non-VA funds.

Section 79.95 Grantee reporting requirements.

Section 79.95 sets forth reporting requirements regarding the legal services carried out using grant funds provided under this part in paragraphs (a) through (f). Under section 4202 of the Act, VA is required to submit biennial reports to Congress about (1) the number of homeless veterans and veterans at risk for homelessness assisted; (2) a description of the legal services provided; (3) a description of the legal matters addressed; and (4) an analysis of the operational effectiveness and cost-effectiveness of the services provided. See 38 U.S.C. 2022A(g). In furtherance of VA's congressionally mandated reporting requirements, we require all grantees to submit reports to VA describing the legal services provided with the approved grant funds. Such reporting requirements ensure that grants funds are being properly used consistent with section 4202 of the Act and this part. These reporting requirements also ensure that VA is being a good fiscal steward of the taxpayer dollar.

In paragraph (a), VA reserves the right to require grantees to provide, in any form as may be prescribed, such reports or answers in writing to specific questions, surveys, or questionnaires as VA determines necessary to carry out the Grant Program.

In paragraph (b), at least once a year or at another frequency set by VA, each grantee must submit to VA a report containing information relating to operational effectiveness; fiscal responsibility; legal services grant agreement compliance; and legal and regulatory compliance, including a description of how the grantee used the grant funds, the number of participants assisted; information on each participant's gender, age, race, and service era; a description of the legal services provided to each participant; and any other information that VA requests. VA deems this information necessary to analyze and monitor the grantee's performance.

In paragraph (c), VA retains the discretion to request additional reports to be able to fully assess the provision of legal services under part 79. This catch-all provision allows VA to request additional reports that it may need to further assess the project and the program. These will vary on a case-by-case basis dependent on the legal services project and its progression. Additionally, if VA is required to submit additional reports to Congress on this program, VA reserves the right to obtain necessary information under this paragraph. This also provides a safeguard in instances where there may be confusing, misleading, inconsistent, or unclear statements in submitted reports. VA reserves the right to request additional reports to clarify information VA receives in other reports submitted by a grantee.

In paragraph (d), VA requires that grantees relate financial data to performance data and develop unit cost information whenever practical. This is another metric to help VA assess the strength of the grantee's legal services program.

In paragraph (e), VA requires that all pages of the reports must cite the assigned legal services grant number and be submitted in a timely manner as set forth in the grant agreement.

In paragraph (f), VA further requires that grantees provide VA with consent to post information from reports on the internet and use such information in other ways

deemed appropriate by VA. Grantees must clearly redact information that is confidential based on attorney-client privilege, unless that privilege has been waived by the client. VA may post portions of the reports on the internet so that the public has a greater understanding of the Grant Program. Additionally, VA may use the information for promotional or evaluation purposes.

Section 79.100 Recordkeeping.

Section 79.100 establishes a recordkeeping requirement on all grantees. Grantees are required to keep and maintain records for at least a 3-year period that document compliance with the Grant Program requirements in part 79. Grantees will need to produce these records at VA's request. This will assist VA in providing oversight over grantees. This provision is consistent with section 4202(a) of the Act requiring VA to analyze the operational effectiveness and cost effectiveness of the legal services provided by the grantees. This provision is also consistent with 2 CFR 200.334 requiring Federal award recipients to keep financial records, supporting documents, statistical records, and all other non-Federal entity records pertinent to a Federal award for a 3-year period.

Section 79.105 Technical assistance.

Under § 79.105, VA will provide technical assistance to applicants and grantees, as necessary, to meet the requirements of part 79. Such technical assistance will be provided either directly by VA or through contracts with appropriate public or non-profit private entities. The technical assistance may provide applicants and grantees with resources for planning, development, and provision of legal services to homeless veterans or veterans at risk for homelessness. As part of this technical assistance, VA may offer training sessions for applicants and grantees to assist with understanding and implementing the Grant Program.

Section 79.110 Withholding, suspension, deobligation, termination, and recovery of funds by VA.

Section 79.110 explains that VA will enforce this part through such actions as may be appropriate. Appropriate actions include withholding, suspension, deobligation, termination, recovery of funds by VA, and actions in accordance with 2 CFR part 200.

Part 200 describes such actions as withholding, suspension, deobligation, termination, and recovery of funds. See 2 CFR 200.208, 200.305, and 200.339 through 200.343, and 200.346. As legal services grants are subject to the requirements of 2 CFR part 200, VA explicitly references 2 CFR part 200 in § 79.110 to ensure that grantees understand and know where to locate these requirements related to withholding, suspension, deobligation, termination, and recovery of funds. VA refers to 2 CFR part 200 rather than include those requirements in this section as those requirements in 2 CFR part 200 may change. Referencing 2 CFR part 200 provides VA the ability to implement those changes without having to conduct further rulemaking.

VA acknowledges that when certain actions (such as suspension and termination) are taken against grantees pursuant to this section and 2 CFR part 200, a disruption in services to participants may occur. While VA is not regulating responsibilities for grantees to continue to provide services or to coordinate the transfer of participants to other sources of legal support, VA will include such requirements and responsibilities in the grant agreement that VA and the grantee enter into pursuant to part 79. This will ensure that the disruption and impact upon participants is minimized as much as possible.

Section 79.115 Legal services grant closeout procedures.

Section 79.115 explains that legal services grants will be closed out in accordance with 2 CFR part 200. Procedures for closing out Federal awards are currently located at 2 CFR 200.344 and 200.345. As legal services grants are subject to

the requirements of 2 CFR part 200, VA explicitly references 2 CFR part 200 in § 79.115 to ensure that grantees understand and know where to locate these requirements. VA refers to 2 CFR part 200 rather than include those requirements in this section as those requirements in 2 CFR part 200 may change, and referencing 2 CFR part 200 provides VA the ability to implement those changes without having to conduct further rulemaking.

Administrative Procedure Act

The Administrative Procedure Act (APA), codified in part at 5 U.S.C. 553, generally requires agencies to publish substantive rules in the Federal Register for notice and comment. These notice and comment requirements generally do not apply to “a matter relating to agency management or personnel or to public property, loans, grants, benefits or contracts.” 5 U.S.C. 553(a)(2). However, 38 U.S.C. 501(d) requires VA to comply with the notice and comment requirements in 5 U.S.C. 553 for matters relating to grants, notwithstanding section 553(a)(2). Thus, as this rulemaking relates to the Grant Program required by section 4202 of the Act, VA is required to comply with the notice and comment requirements of 5 U.S.C. 553.

However, pursuant to 5 U.S.C. 553(b)(B) general notice and the opportunity for public comment are not required with respect to a rulemaking when an “agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.”

In accordance with 5 U.S.C. 553(b)(B), the Secretary has concluded that there is good cause to publish this rule without prior opportunity for public comment. This rule implements the Act’s mandate to establish a new grant program that will allow VA to make grants to eligible entities that provide certain legal services to homeless veterans and veterans at risk for homelessness, with at least 10 percent of funding being utilized

to provide legal services to women veterans. This is the first Grant Program of this kind, as there is currently no other active Federal source of funding focused on providing legal services to veterans.

Homelessness is a national crisis, especially among the veteran population. On a single night in January 2021, there were 19,750 veterans experiencing sheltered homelessness in the United States. See, HUD, The 2021 Annual Homeless Assessment Report (AHAR) to Congress: Part 1: Point-in-Time Estimates of Homelessness (2022), <https://www.huduser.gov/portal/sites/default/files/pdf/2021-AHAR-Part-1.pdf>. Many of these veterans have unmet legal needs that impact their ability to maintain housing. These unmet legal needs are in the areas of family law, court fees/court fines, credit issues/debt collection, expungement of a criminal record, child support issues, and tax issues. See VA Fact Sheet: Community Homelessness Assessment, Local Education and Networking Groups (CHALENG), April 2021, <https://www.va.gov/HOMELESS/docs/CHALENG-2020-508.pdf>. Without the support provided by consistent legal services, individuals may not be able to find or maintain housing. It is critical that this rulemaking publish without delay, as the Grant Program will seek to help prevent and eliminate homelessness among the veteran population by distributing grants for the provision of legal services that will address barriers to housing stability, especially during the Coronavirus Disease-2019 (COVID-19) pandemic.

VA believes that the number of veterans who are homeless is likely significantly higher than HUD's recent estimates, and that more veterans are and will be at risk for homelessness due to the sustained adverse economic consequences of the COVID-19 pandemic on veterans in particular.

Recent available data focused on veteran homelessness is difficult to interpret, with varied information over the last two years of the COVID-19 pandemic that does not accurately reflect the current picture of veterans who are homeless and at risk for

homelessness. After nearly a decade of steady decline, HUD's 2020 point-in-time estimate indicated an increase in veteran homelessness by 0.5 percent from 2019. See, HUD, The 2020 AHAR to Congress: Part 1: Point-in-Time Estimates of Homelessness (2021), <https://www.huduser.gov/portal/sites/default/files/pdf/2020-AHAR-Part-1.pdf>. However, in HUD's most recent AHAR, the number of veterans experiencing sheltered homelessness in 2021 decreased by ten percent from 2020. See, HUD, The 2021 AHAR to Congress: Part 1: Point-in-Time Estimates of Homelessness (2022), <https://www.huduser.gov/portal/sites/default/files/pdf/2021-AHAR-Part-1.pdf>. A comparison of the most recent AHAR to previous AHARs must take into account a complete picture of homelessness in the United States, including protective measures put in place during the COVID-19 pandemic, such as eviction moratoriums, social distancing, and space limits in homeless shelters, which have recently evaporated. This is why the 2021 AHAR is uniquely limited in scope, particularly as it lacks a full unsheltered count of people living in tents, cars, or streets throughout the country. See "Findings—and Limitations—of the 2021 Point-in-Time Count | United States Interagency Council on Homelessness (USICH), <https://www.usich.gov/news/findingsand-limitationsof-the-2021-point-in-time-count/> (Citing COVID-19 concerns, 40 percent of communities—including the places with the highest levels of homelessness and almost the entire state of California—did not conduct a full unsheltered count of people living in tents, cars, or streets. Of the 20 communities with the highest unsheltered numbers in 2020, only one completed a full unsheltered count in 2021). It is worth noting that the 2021 AHAR report also found that *sheltered chronic* homelessness appears to have increased by 20 percent. This is why the actual number of homeless veterans is likely significantly higher than estimated by HUD, since the HUD point-in-time (PIT) estimate also excludes individuals staying in supportive housing paid for by Federal funds, and those moving from place-to-place

among friends or family. Id. As stated by the United States Interagency Council on Homelessness, “[a]ny comparison between this year’s PIT findings and previous findings are complicated by the incompleteness of data for the 2021 count.” Id.

Incomplete data is one of several potential reasons for HUD’s 2021 finding of a ten percent decline in overall sheltered homelessness. In addition, congregate shelters limited their occupancy to comply with Centers for Disease Control and Prevention (CDC) COVID-19 recommendations and pandemic policies. This necessarily resulted in fewer veterans being counted as homeless and the exclusion of veterans who needed such sheltering but could not obtain a space. Moreover, eviction moratoriums, stimulus payments, and expanded unemployment benefits, likely also reduced the number of people counted among the sheltered homeless. Id. Given such limitations on the available data, the true number of veterans who are homeless or at risk for homelessness remains quite unclear.

Notwithstanding things like stimulus payments and expanded unemployment benefits, stay-at-home orders and reduced working hours during the COVID-19 pandemic had a profound economic effect on individuals, including members of the veteran population. U.S. Bureau of Labor Statistics, *Employment Situation of Veterans Summary* (March 18, 2021), https://www.bls.gov/news.release/archives/vet_03182021.htm; see also, Legal Services Corporation, *Appropriations Supplemental Request for Legal Services Corporation Nationwide Grantee Assistance for Coronavirus Emergency Response* (2021), https://www.americanbar.org/content/dam/aba/administrative/government_affairs_office/lsc-covid-supp-request.pdf. The veteran population experienced increased unemployment rates during the COVID-19 pandemic. See, Armstrong, N. (October 25, 2020), *Understanding the economic impacts of COVID-19 on veterans and military families*, Military Times,

<https://www.militarytimes.com/opinion/commentary/2020/10/25/understanding-the-economic-impacts-of-covid-19-on-veterans-and-military-families/>. In fact, in 2020, veteran unemployment rates increased by more than twice the rates in 2019. U.S. Bureau of Labor Statistics, Employment Situation of Veterans Summary (March 18, 2021), www.bls.gov/news.release/archives/vet_03182021.htm.

Job loss and economic hardship due to the COVID-19 pandemic has led to increased housing precarity and risk of eviction. Eviction can have long-term, negative effects as it creates a permanent legal record that can allow landlords to screen tenants with a history of eviction and ultimately preclude them from future rental opportunities. See Benfer, A. et al (2021), *Eviction, Health Inequity, and the Spread of COVID-19: Housing Policy as a Primary Pandemic Mitigation Strategy*, Journal of Urban Health, 98, 1-12. Evictions can therefore lead to homelessness, which is connected to poverty and higher rates of arrest. Access to Justice in the Age of COVID-19: A Roundtable Report (2021), <https://www.justice.gov/ag/page/file/1445356/download>. Legal assistance to prevent eviction can eliminate potential barriers that preclude veterans at risk for homelessness from maintaining housing. See, Access to Justice in the Age of COVID-19: A Roundtable Report (2021), <https://www.justice.gov/ag/page/file/1445356/download>, (“As the pandemic continues, the need for legal services to combat evictions is ongoing.”)

To the extent that actions such as increased unemployment benefits and moratoriums against eviction, foreclosure, and utility shut-offs, helped mitigate the effects of the COVID-19 pandemic, many of these mitigation actions have recently ceased. VA is concerned that the disappearance of such protections will seriously impact the ability of some veterans to maintain stable housing or recover economically. Unemployment and loss of income are major predictors of homelessness. Trott, J., Lattimore, K., Teitelbaum, J., (2020), *Veterans Face Mounting Legal Needs Amidst the*

COVID-19 Pandemic, National Center for Medical Legal Partnership. For this reason, maintaining stable housing is expected to be increasingly difficult and challenging for veterans during and in the aftermath of the COVID-19 pandemic. Id. Additionally, widespread reports of soaring rental prices (see Arnold, C. (February 14, 2022), *It's not just home prices. Rents rise sharply across the U.S.* NPR.

<https://www.npr.org/2022/02/14/1080145270/its-not-just-home-prices-rents-rise-sharply-across-the-u-s>) may leave many veterans at risk for homelessness, especially in light of the economic impact of the COVID-19 pandemic on veterans.

The legal services to be provided under this Grant Program will provide direct economic support for veterans who are homeless or at-risk of becoming so as COVID-19 pandemic mitigation policies evaporate. Historically, half of homeless veterans' unmet needs consist of legal needs, specifically in the areas of family law, court fees/court fines, credit issues/debt collection, expungement of a criminal record, child support issues, and tax issues. See, Fact Sheet, U.S. Dep't of Veterans Aff., CHALENG (April 2021), <https://www.va.gov/HOMELESS/docs/CHALENG-2020-508.pdf>. In both the 2017 and 2018 CHALENG survey responses, legal assistance with evictions/foreclosures were specifically among the top ten unmet needs of homeless veterans.

Time and time again, legal services organizations provide VA with examples of veterans they have assisted with a uniquely legal issue – such as expunging a prior conviction on one's criminal record, achieving a successful complex application for public benefits or modifying a child support order – which changed the course of the veteran's life by providing desperately needed income and stability. For many veterans, legal assistance to obtain reliable income support or to remove obstacles to income results in a critical source of income for rent for stable housing or an anchor from which the veteran can then pursue employment or VA treatment services. Without the legal

assistance provided by this Grant Program, veterans who are homeless or at risk of homelessness may be unable to access compensation benefits from Veterans Benefits Administration or health care benefits from Veterans Health Administration. During the consultation in March 2021, Equal Justice Works reported that between 2018 and 2019, its Veterans Legal Corps attorneys helped obtain economic benefits of over \$11.6 million for veterans by securing public benefits through the provision of legal services. The legal services covered under this Grant Program will result in veterans' ability to sustain housing and avoid homelessness, and therefore must be effective as soon as possible.

As mentioned above, we are approaching a critical point when pandemic protections are disappearing, which presents a larger risk of homelessness and legal issues for which this Grant Program will immediately be needed. There is no other current Federal source of funding that is focused on providing such legal services to veterans. It is therefore of utmost importance to have this regulation effective prior to notice and comment so that legal services can be provided to veterans who are homeless and at risk for homelessness immediately to support housing stability among this population. During the COVID-19 pandemic, legal aid funding has been limited.

See, Kaplan, A. (2021), *More people than ever need legal aid services. But the pandemic has hit legal aid funding hard*, NBC News,

<https://www.nbcnews.com/business/personal-finance/more-people-ever-need-legal-aid-services-pandemic-has-hit-n1264989>. Thus, there are limited legal resources available to address the needs of individuals, including veterans, that may be facing negative economic consequences from the COVID-19 pandemic. According to the Access to Justice in the Age of COVID-19: A Roundtable Report, the COVID-19 pandemic also drastically exacerbated the need for legal help and strained the resources that did exist. See, <https://www.justice.gov/ag/page/file/1445356/download>. The pandemic generated

an unprecedented need for government assistance, including rental and mortgage assistance, child tax credits, unemployment benefits, and utilities payments. At the same time, applying for benefits became even more challenging in the expanded virtual environment. Id.

Through this Grant Program, those veterans who may be hit hardest by the pandemic (that is, homeless veterans and veterans at risk for homelessness) may receive critical legal services related to unemployment benefits, eviction, and those unmet legal needs as discussed earlier. During the COVID-19 pandemic, legal needs in such areas as evictions, unemployment assistance, and income maintenance have increased throughout the country. See, Legal Services Corporation (July 24, 2020), *Legal Services Corporation Survey Finds Major Impact of COVID-19 Pandemic on Legal Aid*, <https://www.lsc.gov/press-release/lsc-survey-finds-major-impact-covid-19-pandemic-legal-aid>; See also, Legal Services Corporation (February 9, 2021), *LSC Requests Funding to Address Surge in Demand for Legal Aid Amid COVID-19*, <https://www.lsc.gov/press-release/lsc-requests-funding-address-surge-demand-legal-aid-amid-covid-19>; See also, Access to Justice in the Age of COVID-19: A Roundtable Report (2021), <https://www.justice.gov/ag/page/file/1445356/download>.

Additionally, the legal services that may be provided pursuant to this Grant Program are critical to this population's health and well-being. Those who have legal problems are more likely to experience suicidal ideation and attempt suicide than those without legal problems. Pre-pandemic, veterans facing legal challenges were 86 percent more likely to have suicidal ideation, and 57 percent more likely to attempt suicide, even after adjusting for mental health conditions that are as relevant as other medical factors like depression for suicide prevention and treatment. Blosnich, J., et al. (2019), *Social Determinants and Military Veterans' Suicide Ideation and Attempt: A Cross-sectional Analysis of Electronic Health Record Data*, 35 J. General Internal Med. 1759–

1767. Veterans with housing instability – whom this Grant Program would directly focus on – were 200 percent more likely to have suicidal ideation, and 118 percent more likely to attempt suicide, also after adjusting for mental health diagnoses. Id. It is therefore critical that the legal services provided by this Grant Program to assist this population are made available as soon as possible. Veterans with legal problems and housing issues alike also experience other co-occurring adverse social determinants of health including financial/employment problems, and nonspecific psychosocial needs, among others, that may contribute to suicidality. Id.

Additionally, many veterans are diagnosed with mental illnesses associated with active-duty service. In 2017, GAO reported that 62 percent of servicemembers separated for misconduct during fiscal years 2011-2015 had been diagnosed with post-traumatic stress disorder (PTSD), traumatic brain injury, or certain other conditions that could be associated with misconduct within the two years before their date of separation. U.S. Government Accountability Office (2017), *GAO-17-260, DOD Health: Actions Needed to Ensure Post-Traumatic Stress Disorder and Traumatic Brain Injury Are Considered in Misconduct Separations*, <https://www.gao.gov/assets/690/685052.pdf>. Without the legal assistance to be provided through this Grant Program, these veterans may be unable to properly file the complete paperwork to have their discharge upgraded. Moreover, when provided in conjunction with VA healthcare, legal services for veterans have been found to decrease veterans' PTSD symptoms, reduce veteran spending on substance abuse, and improve mental health and housing stability. Tsai, J. et al. (2017), *Medical-Legal Partnerships At Veterans Affairs Medical Centers Improved Housing and Psychosocial Outcomes For Vets*, 36 Health Aff. no.12, 2195-2203.

As the White House-Department of Justice Legal Aid Interagency Roundtable found, when someone faces a civil legal problem, such as eviction, the denial of

healthcare benefits, or unemployment, it can interact with other factors and affect an individual's long-term health. Access to Justice in the Age of COVID-19: A Roundtable Report (2021), <https://www.justice.gov/ag/page/file/1445356/download>. The Attorney General's memorandum issued on Veterans Day 2021 also noted that "leaving [Veterans'] legal needs unaddressed exacerbates the risks [they] already face - from housing instability to homelessness and from joblessness to suicide," and called for ways to better meet veterans' legal needs which "may [] utilize new grant authorities that provide legal services for veterans". Attorney General Memorandum - Guarding the Rights of and Improving Access to Justice for Veterans Servicemembers and Military Families (November 10, 2021), <https://justice.gov/opa/page/file/1447636/download>.

Through programs that expand and fund veterans' legal services, such as this Grant Program, VA and other organizations may be able to address destabilizing economic, social, and health inequities among this vulnerable population. See, *Key Studies and Data about How Legal Aid Helps Veterans* (March 23, 2021), The Justice in Government Project, <https://legalaidresourcesdotorg.files.wordpress.com/2021/04/veterans.pdf>. Legal services provided under this Grant Program will assist a veteran in obtaining and maintaining housing, obtaining and sustaining gainful and satisfying employment, and obtaining crucial medical care and compensation benefits, which have both indirect and direct impacts on housing stability, and overall health and well-being. Thus, it is critical that this Grant Program be implemented prior to notice and comment so that VA can provide funding to those entities that can assist homeless veterans and those veterans at risk for homelessness who have unaddressed needs for legal services, which may create barriers to housing stability, especially during the COVID-19 pandemic. Any additional delay in implementation caused by seeking and responding to public comments prior to implementation delays VA's ability to provide direct grant funding for

critical legal services specifically for homeless veterans and veterans at risk for homelessness who may be especially vulnerable and in need of these legal services during, and as a result of, the COVID-19 pandemic. Providing notice and obtaining comment in advance of implementation would add a significant delay to an already lengthy implementation process and would exacerbate a growing and increasingly urgent problem.

Additionally, this rulemaking has not been without public input. VA reiterates that as described earlier in this document, VA sought and obtained such input through a consultation with several legal services organizations experienced in aiding homeless veterans and those at risk for homelessness, as required by the Act. These organizations provided information on the types of legal services to be covered, additional considerations in dealing with rural and tribal communities, and how to determine the effectiveness of the organizations once competitively selected, among other information. This input has been reviewed and incorporated, as appropriate, in this rulemaking.

For these reasons, the Secretary has concluded that ordinary notice and comment procedures would be contrary to the public interest and is accordingly issuing this rule as an interim final rule effective. The Secretary will consider and address comments that are received within 60 days after the date that this interim final rule is published in the Federal Register and address them in a subsequent Federal Register document announcing a final rule incorporating any changes made in response to the public comments.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic,

environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Information and Regulatory Affairs has determined that this rule is not a significant regulatory action under Executive Order 12866. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at www.regulations.gov.

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601-612, is not applicable to this rulemaking because notice of proposed rulemaking is not required. 5 U.S.C. 601(2), 603(a), 604(a).

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This interim final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

This interim final rule includes provisions constituting collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521) that require approval by the Office of Management and Budget (OMB). Accordingly, under 44 U.S.C. 3507(d), VA has submitted a copy of this rulemaking action to OMB for review.

OMB assigns control numbers to collections of information it approves. VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Section 79.25

contains application provisions for legal services grants, including renewals. Section 79.75 contains provisions for program or budget changes and submission of corrective action plans. Section 79.95 contains grantee reporting requirements. These sections are collections of information under the Paperwork Reduction Act of 1995. If OMB does not approve the collections of information as requested, VA will immediately remove the provisions containing a collection of information or take such other action as is directed by OMB.

Comments on the new collection of information contained in this rulemaking should be submitted through www.regulations.gov. Comments should indicate that they are submitted in response to “RIN 2900–AR33— Legal Services for Homeless Veterans and Veterans At-Risk for Homelessness Grant Program” and should be sent within 30 days of publication of this rulemaking. The collection of information associated with this rulemaking can be viewed at: www.reginfo.gov/public/do/PRAMain.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the interim final rule.

The Department considers comments by the public on collections of information in--

- Evaluating whether the collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department’s estimate of the burden of the collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and

- Minimizing the burden of the collections of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The collections of information contained in 38 CFR 79.25, 79.75, and 79.95 are described immediately following this paragraph, under their respective titles.

Title: Initial Applications for the Legal Services for Homeless Veterans and Veterans At-Risk for Homelessness Grant Program

OMB Control No: 2900-xxxx (New/TBD)

CFR Provision: 38 CFR Section 79.25

- Summary of collection of information: The new collection of information in 38 CFR 79.25 contains application provisions for the Grant Program.
- Description of need for information and proposed use of information: This information is needed to award legal services grants to eligible entities.
- Description of likely respondents: Non-profit private and public legal service entities applying for grants.
- Estimated number of respondents per year: 100.
- Estimated frequency of responses: Once annually.
- Estimated average burden per response: 1,440 minutes.
- Estimated total annual reporting and recordkeeping burden: 2,400 hours.
- Estimated cost to respondents per year: VA estimates the annual cost to respondents to be \$133,104.00. Using VA's average annual number of respondents, VA estimates the application information collection burden cost to be \$133,104.00 per year*. (2,400 burden hours for respondents x \$55.46 per hour).

Title: Grant Renewal Applications for the Legal Services for Homeless Veterans and Veterans At-Risk for Homelessness Grant Program

OMB Control No: 2900-xxxx (New/TBD)

CFR Provision: 38 CFR Section 79.25

- Summary of collection of information: The new collection of information in 38 CFR 79.25 requires grantees who want renew their grant to file a renewal application.
- Description of need for information and proposed use of information: VA needs this information to renew legal services grants previously awarded.
- Description of likely respondents: Grant Program grantees seeking a renewal of funds.
- Estimated number of respondents: 75.
- Estimated frequency of responses: Once annually.
- Estimated average burden per response: 1,200 minutes.
- Estimated total annual reporting and recordkeeping burden: 1,500 hours.
- Estimated cost to respondents per year: VA estimates the annual cost to respondents to be \$83,190.00. Using VA's average annual number of respondents, VA estimates the total information collection burden cost to be \$83,109.00 per year*. (1500 burden hours for respondents x \$55.46 per hour).

Title: Program or Budget Changes and Corrective Action Plans for the Legal Services for Homeless Veterans and Veterans At-Risk for Homelessness Grant Program

OMB Control No: 2900-xxxx (New/TBD)

CFR Provision: 38 CFR Section 79.75

- Summary of collection of information: The new collection of information in 38 CFR 79.75 would require grantees to inform VA of changes to their approved program through an amendment process.

- Description of need for information and proposed use of information: This information is needed for a grantee to inform VA of significant changes that will alter a grant program approved by VA. In addition, VA may require grantees to initiate, develop and submit to VA for approval corrective action plans if, on a quarterly basis, actual legal services grant expenditures vary from the amount disbursed to a grantee for that same quarter or actual legal services grant activities vary from the grantee's program description provided in the grant agreement.
- Description of likely respondents: Grantees who desire to modify their approved grant program.
- Estimated number of respondents: 10.
- Estimated frequency of responses: Once annually.
- Estimated average burden per response: 120 minutes.
- Estimated total annual reporting and recordkeeping burden: 20 hours.
- Estimated cost to respondents per year: VA estimates the annual cost to respondents to be \$1,109.20. Using VA's average annual number of respondents, VA estimates the total information collection burden cost to be \$1,109.20 per year*. (20 burden hours for respondents x \$55.46 per hour).

Title: Reporting Requirements for the Legal Services for Homeless Veterans and Veterans At-Risk for Homelessness Grant Program

OMB Control No: 2900-xxxx (New/TBD)

CFR Provision: 38 CFR Section 79.95

- Summary of collection of information: The new collection of information in 38 CFR 79.95 would require the grantee to submit reports pertaining to operational and cost effectiveness, fiscal responsibility, legal services grant agreement compliance, and legal and regulatory compliance.

- Description of need for information and proposed use of information: VA will use this information to determine grantee program effectiveness and compliance with the requirements for the Grant Program.
- Description of likely respondents: Program grantees for the current grant award year.
- Estimated number of respondents: 75.
- Estimated frequency of responses: Quarterly = 4 times per year.
- Estimated average burden per response: 30 minutes.
- Estimated total annual reporting and recordkeeping burden: 150 hours.
- Estimated cost to respondents per year: VA estimates the annual cost to respondents to be \$8,319.00. Using VA's average annual number of respondents, VA estimates the total information collection burden cost to be \$8,319.00 per year*. (150 burden hours for respondents x \$55.46 per hour).

*The total information collection burden cost associated with this regulation is estimated to be \$225,722.20.

Assistance Listing

The Assistance Listing number and title for the program affected by this document is 64.009, Veterans Medical Care Benefits.

Congressional Review Act

Pursuant to Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (known as the Congressional Review Act) (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

List of Subjects in 38 CFR Part 79

Administrative practice and procedure; Disability benefits; Grant programs-health;

Grant programs-social services; Grant programs-transportation; Grant programs-veterans; Grant programs-housing and community development; Health facilities; Homeless; Housing; Housing assistance payments; Indians-lands; Individuals with disabilities; Legal services; Low and moderate income housing; Medicare; Medicaid; Public assistance programs; Public housing; Reporting and recordkeeping requirements; Rural areas; Social security; Supplemental security income (SSI); Travel and transportation expenses; Unemployment compensation; Veterans.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved this document on May 2, 2022, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Consuela Benjamin,

Regulations Development Coordinator,
Office of Regulation Policy & Management,
Office of General Counsel,
Department of Veterans Affairs.

For the reasons stated in the preamble, the Department of Veterans Affairs amends 38 CFR Chapter I by adding part 79 to read as follows:

PART 79 – LEGAL SERVICES FOR HOMELESS VETERANS AND VETERANS AT-RISK FOR HOMELESSNESS GRANT PROGRAM

Sec.

79.0 Purpose and scope.

79.5 Definitions.

79.10 Eligible entities.

79.15 Eligible veterans.

79.20 Legal services.

79.25 Applications for legal services grants.

79.30 Threshold requirements prior to scoring legal services grant applicants.

79.35 Scoring criteria for legal services grant applicants.

79.40 Selection of grantees.

79.45 Scoring criteria for grantees applying for renewal of legal services grants.

79.50 Selecting grantees for renewal of legal services grants.

79.55 General operation requirements.

79.60 Fee prohibition.

79.65 Notice of Funding Opportunity (NOFO).

79.70 Legal services grant agreements.

79.75 Program or budget changes and corrective action plans.

79.80 Faith-based organizations.

79.85 Visits to monitor operations and compliance.

79.90 Financial management and administrative costs.

79.95 Grantee reporting requirements.

79.100 Recordkeeping.

79.105 Technical assistance.

79.110 Withholding, suspension, deobligation, termination, and recovery of funds by VA.

79.115 Legal services grant closeout procedures.

Authority: 38 U.S.C. 501, 38 U.S.C.2022A, and as noted in specific sections.

§ 79.0 Purpose and scope.

(a) *Purpose.* This part implements the Legal Services for Homeless Veterans and Veterans At-Risk for Homelessness Grant Program to award legal services grants to eligible entities to provide legal services to eligible veterans.

(b) *Scope.* Legal services covered by this part are those services that address the needs of eligible veterans who are homeless or at risk for homelessness.

§ 79.5 Definitions.

For purposes of this part and any Notice of Funding Opportunity (NOFO) issued under this part:

Applicant means an eligible entity that submits an application for a legal services grant announced in a NOFO.

At risk for homelessness means an individual who meets the criteria identified in § 79.15(b).

Direct Federal financial assistance means Federal financial assistance received by an entity selected by the Government or a pass-through entity as defined in 38 CFR 50.1(d) to provide or carry out a service (e.g., by contract, grant, or cooperative agreement).

Disallowed costs means costs charged by a grantee that VA determines to be unallowable based on applicable Federal cost principles or based on this part or the legal services grant agreement.

Eligible entity means an entity that meets the requirements of § 79.10.

Eligible veteran means a veteran that meets the requirements of § 79.15(a) or (b).

Grantee means an eligible entity that is awarded a legal services grant under this part.

Homeless veteran means a veteran who is homeless as that term is defined in subsection (a) or (b) of section 103 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11302).

Indian tribe has the meaning as given that term in 25 U.S.C. 4103.

Indirect Federal financial assistance means Federal financial assistance in which a service provider receives program funds through a voucher, certificate, agreement or

other form of disbursement, as a result of the genuine, independent choice of a participant.

Legal services means the services listed in § 79.20.

Legal services grant means a grant awarded under this part.

Legal services grant agreement means the agreement executed between VA and a grantee as specified under § 79.70.

Non-profit private entity means an entity that meets the criteria in § 79.10(c).

Notice of Funding Opportunity (NOFO) has the meaning as given to this term in 2 CFR 200.1.

Participant means an eligible veteran who is receiving legal services from a grantee under this part.

Public entity means an entity that meets the criteria in § 79.10(b).

Rural communities means those communities considered rural according to the Rural-Urban Commuting Area (RUCA) system as determined by the United States Department of Agriculture (USDA).

State means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments.

Subcontractor means any third-party contractor, of any tier, working directly for an eligible entity.

Suspension means an action by VA that temporarily withdraws VA funding under a legal services grant, pending corrective action by the grantee or pending a decision to terminate the legal services grant by VA. Suspension of a legal services grant is a separate action from suspension under VA regulations or guidance implementing Executive Orders 12549 and 12689, "Debarment and Suspension."

Tribal organization has the meaning given that term in 25 U.S.C. 5304.

Trust land has the meaning given that term in 38 U.S.C. 3765.

Very Low Income means a veteran's income is 50 percent or less of the median income for an area or community.

Veteran has the meaning given to that term in 38 U.S.C. 101(2).

Withholding means that payment of a legal services grant will not be paid until such time as VA determines that the grantee provides sufficiently adequate documentation and/or actions to correct a deficiency for the legal services grant.

§ 79.10 Eligible entities.

(a) To be an eligible entity under this part, the entity must:

(1) Be a public or nonprofit private entity with the capacity to effectively administer a grant under this part;

(2) Demonstrate that adequate financial support will be available to carry out the services for which the grant is sought consistent with the legal services grant application; and

(3) Agree to meet the applicable criteria and requirements of this part.

(b) A public entity includes any of the following:

(1) Local government, (that is, a county, municipality, city, town, township, local public authority (including any public and Indian housing agency under the United States Housing Act of 1937), school district, special district, intrastate district, council of governments (whether or not incorporated as a nonprofit corporation under state law), any other regional or interstate government entity, or any agency or instrumentality of a local government);

(2) State government;

(3) Federally recognized Indian tribal government. The governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or

community (including any Native village as defined in section 3 of the Alaska Native Claims Settlement Act, 85 Stat 688) certified by the Secretary of the Interior as eligible for the special programs and services provided by the Bureau of Indian Affairs.

(c) A nonprofit private entity is an entity that meets the requirements of 26 U.S.C. 501(c)(3) or (19).

§ 79.15 Eligible veterans.

(a) To be eligible for legal services under this part, an individual must be a:

(1) Homeless veteran or

(2) Veteran at risk for homelessness.

(b) “At risk for homelessness” in this part means an individual who does not have sufficient resources or support networks, *e.g.*, family, friends, faith-based or other social networks, immediately available to prevent them from moving to an emergency shelter or another place described in paragraph (1) of the definition of “homeless” in 24 CFR 576.2 and meets one or more of the following conditions:

(1) Has moved because of economic reasons two or more times during the 60 days immediately preceding the application for assistance;

(2) Is living in the home of another because of economic hardship;

(3) Has been notified in writing that their right to occupy their current housing or living situation will be terminated within 21 days after the date of application for assistance;

(4) Is constructively evicted from their current housing because of untenable conditions created by the landlord such as shutting off electricity and water or discriminatory acts;

(5) Lives in a hotel or motel and the cost of the hotel or motel stay is not paid by charitable organizations or by Federal, State, or local government programs for low-

income individuals;

(6) Lives in a single-room occupancy or efficiency apartment unit in which there reside more than two persons or lives in a larger housing unit in which there reside more than 1.5 persons reside per room, as defined by the U.S. Census Bureau;

(7) Is exiting a publicly funded institution, or system of care (such as a health-care facility, a mental health facility, foster care or other youth facility, or correction program or institution);

(8) Is fleeing, or is attempting to flee domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions that relate to violence against the individual, including a child, that has either taken place within the individual's primary nighttime residence or has made the individual afraid to return to their primary nighttime residence; or

(9) Otherwise lives in housing that has characteristics associated with instability and an increased risk for homelessness.

§ 79.20 Legal services.

Allowable legal services covered under this Grant Program are limited to the following:

(a) Legal services related to housing, including eviction defense, representation in landlord-tenant cases, and representation in foreclosure cases.

(b) Legal services relating to family law, including assistance in court proceedings for child support and custody, divorce, estate planning, and family reconciliation.

(c) Legal services relating to income support, including assistance in obtaining public benefits.

(d) Legal services relating to criminal defense, including defense in matters symptomatic of homelessness, such as outstanding warrants, fines, driver's license revocation, and citations. To reduce recidivism and facilitate the overcoming of reentry obstacles in employment or housing, covered legal services relating to criminal defense also include legal assistance with requests to expunge or seal a criminal record.

(e) Legal services relating to requests to upgrade the characterization of a discharge or dismissal of a former member of the Armed Forces under 10 U.S.C. 1553.

(f) Other covered legal services as determined appropriate by the Secretary, including:

(1) Legal assistance with protective orders and other matters related to domestic or intimate partner violence.

(2) Access to health care.

(3) Consumer law matters, such as debt collection, garnishments, usury, fraud, deceit, and financial exploitation.

(4) Employment law matters.

(5) The unmet legal needs of male and female veterans in VA's annual Community Homelessness Assessment, Local Education and Networking Groups (CHALENG) survey for the grant award year.

§ 79.25 Applications for legal services grants.

(a) To apply for a legal services grant, an applicant must submit to VA a complete legal services grant application package, as described in the NOFO. A complete legal services grant application package includes the following:

(1) A description of the legal services to be provided by the applicant and the identified need for such legal services among eligible veterans;

(2) A description of how the applicant will ensure that services are provided to eligible veterans, including women veterans;

(3) A description of the characteristics of eligible veterans who will receive legal services provided by the applicant;

(4) An estimate with supporting documentation of the number of eligible veterans, including an estimate of the number of eligible women veterans, who will receive legal services provided by the applicant;

(5) A plan for how the applicant will use at least ten percent of the grant funds to serve eligible women veterans;

(6) Documentation describing the experience of the applicant and any identified subcontractors in providing legal services to eligible veterans;

(7) Documentation relating to the applicant's ability to coordinate with any identified subcontractors;

(8) Documentation of the applicant's capacity to effectively administer a grant under this section that describes the applicant's:

(i) Accounting practices and financial controls;

(ii) Capacity for data collection and reporting required under this part; and

(iii) Experience administering other Federal, State, or county grants similar to the Grant Program under this part.

(9) Documentation of the managerial capacity of the applicant to:

(i) Coordinate the provision of legal services by the applicant or by other organizations on a referral basis;

(ii) Assess continuously the needs of eligible veterans for legal services;

(iii) Coordinate the provision of legal services with services provided by VA;

(iv) Customize legal services to the needs of eligible veterans; and

(v) Comply with and implement the requirements of this part throughout the term of the legal services grant.

(10) Documentation that demonstrates that adequate financial support will be available to carry out the legal services for which the grant is sought consistent with the application; and

(11) Any additional information as deemed appropriate by VA.

(b) Subject to funding availability, grantees may submit an application for renewal of a legal services grant if the grantee's program will remain substantially the same. To apply for renewal of a legal services grant, a grantee must submit to VA a complete legal services grant renewal application package, as described in the NOFO.

(c) VA may request in writing that an applicant or grantee, as applicable, submit other information or documentation relevant to the legal services grant application.

§ 79.30 Threshold requirements prior to scoring legal services grant applicants.

VA will only score applicants that meet the following threshold requirements:

(a) The application is filed within the time period established in the NOFO, and any additional information or documentation requested by VA under § 79.25(c) is provided within the time frame established by VA;

(b) The application is completed in all parts;

(c) The activities for which the legal services grant is requested are eligible for funding under this part;

(d) The applicant's prospective participants are eligible to receive legal services under this part;

(e) The applicant agrees to comply with the requirements of this part;

(f) The applicant does not have an outstanding obligation to the Federal Government that is in arrears and does not have an overdue or unsatisfactory response to an audit; and

(g) The applicant is not in default by failing to meet the requirements for any previous Federal assistance.

§ 79.35 Scoring criteria for legal services grant applicants.

VA will score applicants who are applying for a legal services grant. VA will set forth specific point values to be awarded for each criterion in the NOFO. VA will use the following criteria to score these applicants:

(a) VA will award points based on the background, qualifications, experience, and past performance, of the applicant, and any subcontractors identified by the applicant in the legal services grant application, as demonstrated by the following:

(1) *Background and organizational history.* (i) Applicant's, and any identified subcontractors', background and organizational history are relevant to providing legal services.

(ii) Applicant, and any identified subcontractors, maintain organizational structures with clear lines of reporting and defined responsibilities.

(iii) Applicant, and any identified subcontractors, have a history of complying with agreements and not defaulting on financial obligations.

(2) *Organization and staff qualifications.* (i) Applicant, and any identified subcontractors, have experience working with veterans or individuals who are homeless, at risk for homelessness, or who have very low income, as defined under this part.

(ii) Applicant, and any identified subcontractors, have experience providing legal services, including providing such services to veterans, or individuals who are homeless, at risk for homelessness or who have very low income.

(iii) Applicant, and any identified subcontractors, have or plan to hire staff, who are qualified to administer legal services, and as applicable, are in good standing as a member of the applicable State bar.

(iv) Applicant's staff, and any identified subcontractors' staff, have experience administering programs similar to the Grant Program under this part.

(b) VA will award points based on the applicant's program concept and legal services plan, as demonstrated by the following:

(1) *Need for the program.* (i) Applicant has shown a need amongst eligible veterans in the area or community where the program will be based.

(ii) Applicant understands the legal services needs unique to eligible veterans in the area or community where the program will be based.

(2) *Outreach and screening plan.* (i) Applicant has a feasible outreach and referral plan to identify and assist eligible veterans in need of legal services.

(ii) Applicant has a plan to process and receive legal services referrals for eligible veterans.

(iii) Applicant has a plan to assess and accommodate the needs of referred eligible veterans.

(3) *Program concept.* (i) Applicant's program concept, size, scope, and staffing plan are feasible.

(ii) Applicant's program is designed to meet the legal needs of eligible veterans in the area or community where the program will be based.

(4) *Program implementation timeline.* (i) Applicant's program will be implemented in a timely manner and legal services will be delivered to eligible veterans as quickly as possible and within a specified timeline.

(ii) Applicant has a hiring plan in place to meet the applicant's program timeline or has existing staff to meet such timeline.

(5) *Collaboration and communication with VA.* Applicant has a plan to coordinate outreach and services with local VA facilities.

(6) *Ability to meet VA's requirements, goals, and objectives for the grant program.* Applicant is committed to ensuring that its program meets VA's requirements, goals, and objectives for the Grant Program as identified in the NOFO.

(7) *Capacity to undertake program.* Applicant has sufficient capacity, including staff resources, to undertake the program.

(c) VA will award points based on the applicant's quality assurance and evaluation plan, as demonstrated by the following:

(1) *Program evaluation.* Applicant has created clear, realistic, and measurable metrics that align with the Grant Program's aim of addressing the legal needs of eligible veterans and through which the applicant's program performance can be continually evaluated.

(2) *Monitoring.* (i) Applicant has adequate controls in place to regularly monitor the program, including any subcontractors, for compliance with all applicable laws, regulations, and guidelines.

(ii) Applicant has adequate financial and operational controls in place to ensure the proper use of legal services grant funds.

(iii) Applicant has a plan for ensuring that the applicant's staff and any subcontractors are appropriately trained and comply with the requirements of this part.

(3) *Remediation*. Applicant has a plan or establishes a system for remediating non-compliant aspects of the program if and when they are identified.

(4) *Management and reporting*. Applicant's program management team has the capability and a system in place to provide to VA timely and accurate reports at the frequency set by VA.

(d) VA will award points based on the applicant's financial capability and plan, as demonstrated by the following:

(1) *Organizational finances*. Applicant, and any identified subcontractors, are financially stable.

(2) *Financial feasibility of program*. (i) Applicant has a realistic plan for obtaining all funding required to operate the program for the period of the legal services grant.

(ii) Applicant's program is cost-effective and can be effectively implemented on-budget.

(e) VA will award points based on the applicant's area or community linkages and relations, as demonstrated by the following:

(1) *Area or community linkages*. Applicant has a plan for developing or has existing linkages with Federal (including VA), State, local, and tribal governments, agencies, and private entities for the purposes of providing additional legal services to eligible veterans.

(2) *Past working relationships*. Applicant (or applicant's staff), and any identified subcontractors (or subcontractors' staff), have fostered successful working relationships and linkages with public and private organizations providing legal and non-legal supportive services to veterans who are also in need of services similar to those covered under the Grant Program.

(3) *Local presence and knowledge*. (i) Applicant has a presence in the area or community to be served by the applicant.

(ii) Applicant understands the dynamics of the area or community to be served by the applicant.

(4) *Integration of linkages and program concept.* Applicant's linkages to the area or community to be served by the applicant enhance the effectiveness of the applicant's program.

§ 79.40 Selection of grantees.

VA will use the following process to select applicants to receive legal services grants:

(a) VA will score all applicants that meet the threshold requirements set forth in § 79.30 using the scoring criteria set forth in § 79.35.

(b) VA will group applicants within the applicable funding priorities if funding priorities are set forth in the NOFO.

(c) VA will rank those applicants who receive at least the minimum amount of total points and points per category set forth in the NOFO, within their respective funding priority group, if any. The applicants will be ranked in order from highest to lowest scores, within their respective funding priority group, if any.

(d) VA will use the applicant's ranking as the primary basis for selection for funding. However, VA will also use the following considerations to select applicants for funding:

(1) VA will give preference to applicants that have the demonstrated ability to provide the provision of legal services eligible individuals who are homeless, at risk for homelessness or have very low income, as defined by this part.

(2) To the extent practicable, VA will ensure that legal services grants are equitably distributed across geographic regions, including rural communities, trust lands, Native Americans, and tribal organizations.

(3) VA will give preference to applicants with a demonstrated focus on women veterans as set forth in the NOFO.

(e) Subject to paragraph (d) of this section, VA will fund the highest-ranked applicants for which funding is available, within the highest funding priority group, if any. If funding priorities have been established, to the extent funding is available and subject to paragraph (d) of this section, VA will select applicants in the next highest funding priority group based on their rank within that group.

(f) If an applicant would have been selected but for a procedural error committed by VA, VA may select that applicant for funding when sufficient funds become available if there is no material change in the information that would have resulted in the applicant's selection. A new application would not be required.

§ 79.45 Scoring criteria for grantees applying for renewal of legal services grants.

VA will score applicants who are applying for a renewal of a legal services grant. VA will set forth specific point values to be awarded for each criterion in the NOFO. VA will use the following criteria to score grantees applying for renewal of a legal services grant:

(a) VA will award points based on the success of the grantee's program, as demonstrated by the following:

- (1) Participants were satisfied with the legal services provided by the grantee.
- (2) The grantee delivered legal services to participants in a timely manner.
- (3) The grantee implemented the program by developing and sustaining relationships with community partners to refer veterans in need of legal services.
- (4) The grantee was effective in conducting outreach to eligible veterans, including specifically to women veterans, and increased engagement of eligible veterans seeking legal services provided by the grantee.

(b) VA will award points based on the cost effectiveness of the grantee's program, as demonstrated by the following:

(1) The cost per participant was reasonable.

(2) The grantee's program was effectively implemented within budget.

(c) VA will award points based on the extent to which the grantee complied with the Grant Program's goals and requirements, as demonstrated by the following:

(1) The grantee's program was administered in accordance with VA's goals for the Grant Program as described in the NOFO.

(2) The grantee's program was administered in accordance with all applicable laws, regulations, and guidelines.

(3) The grantee's program was administered in accordance with the grantee's legal services grant agreement.

§ 79.50 Selecting grantees for renewal of legal services grants.

VA will use the following process to select grantees applying for renewal of legal services grants:

(a) So long as the grantee continues to meet the threshold requirements set forth in § 79.30, VA will score the grantee using the scoring criteria set forth in § 79.45.

(b) VA will rank those grantees who receive at least the minimum amount of total points and points per category set forth in the NOFO. The grantees will be ranked in order from highest to lowest scores.

(c) VA will use the grantee's ranking as the basis for selection for funding. VA will fund the highest-ranked grantees for which funding is available.

(d) At its discretion, VA may award any non-renewed funds to an applicant or existing grantee. If VA chooses to award non-renewed funds to an applicant or existing grantee, funds will be awarded as follows:

(1) VA will first offer to award the non-renewed funds to the applicant or grantee with the highest grant score under the relevant NOFO that applies for, or is awarded a renewal grant in, the same community as, or a proximate community to, the affected community. Such applicant or grantee must have the capacity and agree to provide prompt services to the affected community. For the purposes of this section, the relevant NOFO is the most recently published NOFO which covers the geographic area that includes the affected community, or for multi-year grant awards, the NOFO for which the grantee, who is offered the additional funds, received the multi-year award.

(2) If the first such applicant or grantee offered the non-renewed funds refuses the funds, VA will offer to award the funds to the next highest-ranked such applicant or grantee, per the criteria in paragraph (d)(1) of this section, and continue on in rank order until the non-renewed funds are awarded.

(e) If a grantee would have been selected but for a procedural error committed by VA, VA may select that grantee for funding when sufficient funds become available if there is no material change in the information that would have resulted in the grantee's selection. A new application would not be required.

§ 79.55 General operation requirements.

(a) *Eligibility documentation.* (1) Prior to providing legal services, grantees must verify and document each veteran's eligibility for legal services and classify the veteran based on the eligible veteran criteria as set forth in § 79.15.

(2) Once the grantee initiates legal services, the grantee will continue to provide legal services to the participant through completion of the legal services so long as the participant continues to meet the eligibility criteria set forth in § 79.15.

(3) If a grantee finds at any point in the grant award period that a participant is ineligible to receive legal services under this part, or the provider is unable to meet the

legal needs of that participant, the grantee must document the reason for the participant's ineligibility or the grantee's inability to provide legal services and provide the veteran information on other available programs or resources or provide a referral to another legal services organization that is able to meet the veteran's needs.

(b) *Legal services documentation.* For each participant who receives legal services from the grantee, the grantee must document the legal services provided, how such services were provided, the duration of the services provided, any goals for the provision of such services, and measurable outcomes of the legal services provided as determined by the Secretary, such as whether the participant's legal issue was resolved.

(c) *Confidentiality.* Grantees must maintain the confidentiality of records kept in connection to legal services provided to participants. Grantees that provide legal services must establish and implement procedures to ensure the confidentiality of:

- (1) Records pertaining to any participant, and
- (2) The address or location where the legal services are provided.

Such confidentiality should be consistent with the grantee's State bar rules on confidentiality in an attorney-client relationship.

(d) *Notifications to participants.* Prior to initially providing legal services to a participant, the grantee must notify each participant of the following:

- (1) The legal services are being paid for, in whole or in part, by VA;
 - (2) The legal services available to the participant through the grantee's program;
- and
- (3) Any conditions or restrictions on the receipt of legal services by the participant.

(e) *Assessment of funds.* Grantees must regularly assess how legal services grant funds can be used in conjunction with other available funds and services to ensure continuity of program operations and to assist participants.

(f) *Administration of legal services grants.* Grantees must ensure that legal services grants are administered in accordance with the requirements of this part, the legal services grant agreement, and other applicable laws and regulations. Grantees are responsible for ensuring that any subcontractors carry out activities in compliance with this part.

§ 79.60 Fee prohibition.

Grantees must not charge a fee to participants for providing legal services that are funded with amounts from a legal services grant under this part.

§ 79.65 Notice of Funding Opportunity (NOFO).

When funds are available for legal services grants, VA will publish a NOFO in the Federal Register and on grants.gov. The notice will identify:

- (a) The location for obtaining legal services grant applications;
- (b) The date, time, and place for submitting completed legal services grant applications;
- (c) The estimated amount and type of legal services grant funding available, including the maximum grant funding available per award;
- (d) Any priorities for or exclusions from funding to meet the statutory mandates of 38 U.S.C. 2022A and VA goals for the Grant Program;
- (e) The length of term for the legal services grant award;
- (f) Specific point values to be awarded for each criterion listed in §§ 79.35 and 79.45;

- (g) The minimum number of total points and points per category that an applicant or grantee, as applicable, must receive in order for a legal services grant to be funded;
- (h) Any maximum uses of legal services grant funds for specific legal services;
- (i) The timeframes and manner for payments under the legal services grant; and
- (j) Other information necessary for the legal services grant application process as determined by VA, including the requirements, goals, and objectives of the Grant Program, and how the preference under § 79.40(d)(3) may be met.

§ 79.70 Legal services grant agreements.

(a) After an applicant is selected for a legal services grant in accordance with § 79.40, VA will draft a legal services grant agreement to be executed by VA and the grantee. Upon execution of the legal services grant agreement, VA will obligate legal services grant funds to cover the amount of the approved legal services grant, subject to the availability of funding. The legal services grant agreement will provide that the grantee agrees, and will ensure that each subcontractor agrees, to:

(1) Operate the program in accordance with the provisions of this part and the applicant's legal services grant application;

(2) Comply with such other terms and conditions, including recordkeeping and reports for program monitoring and evaluation purposes, as VA may establish for purposes of carrying out the Grant Program, in an effective and efficient manner; and

(3) Provide such additional information as deemed appropriate by VA.

(b) After a grantee is selected for renewal of a legal services grant in accordance with § 79.50, VA will draft a legal services grant agreement to be executed by VA and the grantee. Upon execution of the legal services grant agreement, VA will obligate legal services grant funds to cover the amount of the approved legal services grant,

subject to the availability of funding. The legal services grant agreement will contain the same provisions described in paragraph (a) of this section.

(c) No funds provided under this part may be used to replace Federal, State, tribal, or local funds previously used, or designated for use, to assist eligible veterans.

§ 79.75 Program or budget changes and corrective action plans.

(a) A grantee must submit to VA a written request to modify a legal services grant for any proposed significant change that will alter its legal services grant program. If VA approves such change, VA will issue a written amendment to the legal services grant agreement. A grantee must receive VA's approval prior to implementing a significant change. Significant changes include, but are not limited to, a change in the grantee or any subcontractors identified in the legal services grant agreement; a change in the area or community served by the grantee; additions or deletions of legal services provided by the grantee; a change in category of eligible veterans to be served; and a change in budget line items that are more than 10 percent of the total legal services grant award.

(1) VA's approval of changes is contingent upon the grantee's amended application retaining a sufficient rank to have been competitively selected for funding in the year that the application was granted.

(2) Each legal services grant modification request must contain a description of the revised proposed use of legal services grant funds.

(b) VA may require that the grantee initiate, develop, and submit to VA for approval a Corrective Action Plan (CAP) if, on a quarterly basis, actual legal services grant expenditures vary from the amount disbursed to a grantee for that same quarter or actual legal services grant activities vary from the grantee's program description provided in the legal services grant agreement.

(1) The CAP must identify the expenditure or activity source that has caused the deviation, describe the reason(s) for the variance, provide specific proposed corrective action(s), and provide a timetable for accomplishment of the corrective action.

(2) After receipt of the CAP, VA will send a letter to the grantee indicating that the CAP is approved or disapproved. If disapproved, VA will make beneficial suggestions to improve the proposed CAP and request resubmission or take other actions in accordance with this part.

(c) Grantees must inform VA in writing of any key personnel changes (e.g., new executive director, grant program director, or chief financial officer) and grantee address changes within 30 days of the change.

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900-TBD.)

§ 79.80 Faith-based organizations.

(a) Organizations that are faith-based are eligible, on the same basis as any other organization, to participate in the Grant Program under this part. Decisions about awards of Federal financial assistance must be free from political interference or even the appearance of such interference and must be made on the basis of merit, not on the basis of religion or religious belief or lack thereof.

(b)(1) No organization may use direct financial assistance from VA under this part to pay for explicitly religious activities such as religious worship, instruction, or proselytization; or equipment or supplies to be used for any of those activities.

(2) References to financial assistance are deemed to be references to direct Federal financial assistance, unless the referenced assistance meets the definition of indirect Federal financial assistance in this part.

(c) Organizations that engage in explicitly religious activities, such as worship, religious instruction, or proselytization, must offer those services separately in time or location from any programs or services funded with direct financial assistance from VA under this part, and participation in any of the organization's explicitly religious activities must be voluntary for the participants of a program or service funded by direct financial assistance from VA under this part.

(d) A faith-based organization that participates in the Grant Program under this part will retain its independence from Federal, State, or local governments and may continue to carry out its mission, including the definition, practice and expression of its religious beliefs, provided that it does not use direct financial assistance from VA under this part to support any explicitly religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities to provide VA-funded services under this part, without concealing, removing, or altering religious art, icons, scripture, or other religious symbols. In addition, a VA-funded faith-based organization retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members and otherwise govern itself on a religious basis, and include religious reference in its organization's mission statements and other governing documents.

(e) An organization that participates in the Grant Program shall not, in providing legal services, discriminate against a program participant or prospective participant regarding legal services on the basis of religion or religious belief.

(f) If a State or local government voluntarily contributes its own funds to supplement federally funded activities, the State or local government has the option to segregate the Federal funds or commingle them. However, if the funds are commingled, this provision applies to all of the commingled funds.

(g) To the extent otherwise permitted by Federal law, the restrictions on explicitly religious activities set forth in this section do not apply where VA funds are provided to faith-based organizations through indirect Federal financial assistance. A faith-based organization may receive such funds as the result of a participant's genuine and independent choice if, for example, a participant redeems a voucher, coupon, or certificate, allowing the participant to direct where funds are to be paid, or a similar funding mechanism provided to that participant and designed to give that participant a choice among providers.

§ 79.85 Visits to monitor operations and compliance.

(a) VA has the right, at all reasonable times, to make visits to all grantee locations where a grantee is using legal services grant funds in order to review grantee accomplishments and management control systems and to provide such technical assistance as may be required. VA may conduct inspections of all program locations and records of a grantee at such times as are deemed necessary to determine compliance with the provisions of this part. If a grantee delivers services in a participant's home, or at a location away from the grantee's place of business, VA may accompany the grantee. If the grantee's visit is to the participant's home, VA will only accompany the grantee with the consent of the participant. If any visit is made by VA on the premises of the grantee or a subcontractor under the legal services grant, the grantee must provide, and must require its subcontractors to provide, all reasonable facilities and assistance for the safety and convenience of the VA representatives in the performance of their duties. All visits and evaluations will be performed in such a manner as will not unduly delay services.

(b) The authority to inspect carries with it no authority over the management or control of any applicant or grantee under this part.

§ 79.90 Financial management and administrative costs.

(a) Grantees must comply with applicable requirements of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards under 2 CFR part 200.

(b) Grantees must use a financial management system that provides adequate fiscal control and accounting records and meets the requirements set forth in 2 CFR part 200.

(c) Payment up to the amount specified in the legal services grant must be made only for allowable, allocable, and reasonable costs in conducting the work under the legal services grant. The determination of allowable costs must be made in accordance with the applicable Federal Cost Principles set forth in 2 CFR part 200.

(d) Costs for administration by a grantee must not exceed 10 percent of the total amount of the legal services grant. Administrative costs will consist of all costs associated with the management of the program, including administrative costs of subcontractors.

§ 79.95 Grantee reporting requirements.

(a) VA may require grantees to provide, in such form as may be prescribed, such reports or answers in writing to specific questions, surveys, or questionnaires as VA determines necessary to carry out the Grant Program.

(b) At least once per year, or at the frequency set by VA, each grantee must submit to VA a report containing information relating to operational effectiveness; fiscal responsibility; legal services grant agreement compliance; and legal and regulatory compliance. This report must include a breakdown of how the grantee used the legal services grant funds; the number of participants assisted; information on each

participant's gender, age, race, and service era; a description of the legal services provided to each participant; and any other information that VA requests.

(c) VA may request additional reports to allow VA to fully assess the provision legal services under this part.

(d) Grantees must relate financial data to performance data and develop unit cost information whenever practical.

(e) All pages of the reports must cite the assigned legal services grant number and be submitted in a timely manner as set forth in the grant agreement.

(f) Grantees must provide VA with consent to post information from reports on the internet and use such information in other ways deemed appropriate by VA.

Grantees must clearly redact information that is confidential based on attorney-client privilege, unless that privilege has been waived by the client.

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900-TBD.)

§ 79.100 Recordkeeping.

Grantees must ensure that records are maintained for at least a 3-year period to document compliance with this part. Grantees must produce such records at VA's request.

§ 79.105 Technical assistance.

VA will provide technical assistance, as necessary, to applicants and grantees to meet the requirements of this part. Such technical assistance will be provided either directly by VA or through contracts with appropriate public or non-profit private entities.

§ 79.110 Withholding, suspension, deobligation, termination, and recovery of funds by VA.

VA will enforce this part through such actions as may be appropriate. Appropriate actions include withholding, suspension, deobligation, termination, recovery of funds by VA, and actions in accordance with 2 CFR part 200.

§ 79.115 Legal services grant closeout procedures.

Legal services grants will be closed out in accordance with 2 CFR part 200.

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